

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

JOE HOLCOMBE, ET AL, .  
PLAINTIFFS, .  
vs. . DOCKET NO. 5:18-CV-555-XR  
UNITED STATES OF AMERICA, .  
DEFENDANT. .

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS  
BEFORE THE HONORABLE XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE  
APRIL 12, 2021

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SAN ANTONIO, TEXAS  
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1       *(San Antonio, Texas; April 12, 2021, at 8:59 a.m., in open*  
2 *court.)*

3           THE COURT: Thank you. Please be seated.

4       Good morning. Well, I'm on -- I'm on mute. Let's try  
5 again. Here we go.

6       Good morning. We'll resume with 18-civil-555. I remind  
7 all counsel, parties, witnesses, participants, and members of  
8 the public that this is a formal proceeding and that they  
9 should behave at all times as if they were present in the  
10 courtroom.

11       The standing order of the San Antonio Division of the  
12 Western District of Texas on remote access to court  
13 proceedings remains in effect.

14       Photography, recording, or streaming of this proceeding,  
15 by any means, is strictly prohibited. Though this proceeding  
16 is open to the public, technological restraints require that  
17 members of the general public request access the courtroom  
18 deputy to participate remotely. Those granted approval to  
19 participate remotely must not forward the electronic link to  
20 nonparticipating colleagues or persons and must not post the  
21 link on any public forum.

22       As with all proceedings, violation of these instructions  
23 are subject to contempt proceedings. Accordingly, please  
24 exercise proper decorum at all times.

25       Good morning. And with that, we'll begin your next

1 witness, please.

2 MR. STERN: Your Honor, I think there's a few  
3 housekeeping matters to take care of --

4 THE COURT: Okay.

5 MR. STERN: -- first.

6 The government is going to withdraw Daniel Breyer from its  
7 witness list. The government can move up Stephen Barborini to  
8 Tuesday or leave him on Wednesday. However, it leaves  
9 somewhat of a gap either Tuesday afternoon or Wednesday  
10 afternoon.

11 And so we'll defer to the Court on how to handle its own  
12 schedule.

13 THE COURT: Let's get through today, and we'll see  
14 where we land.

15 MR. STERN: Fair enough.

16 THE COURT: Yes, sir?

17 MR. ALSAFFAR: That's it, Your Honor.

18 THE COURT: Good enough.

19 Your next witness.

20 MR. STERN: One other minor issue, and that is  
21 Dr. Fox is going to be appearing in person, if that's okay  
22 with Your Honor.

23 THE COURT: Yes.

24 MR. STERN: And that would be Friday.

25 THE COURT: Thank you.



1 MR. STERN: Thank you.

2 MR. ALSAFFAR: Nothing from us, Your Honor.

3 THE COURT: Your next witness.

4 MR. JACOB: Your Honor, plaintiff calls Jon Rymer to  
5 the stand via remote.

6 THE CLERK: Mr. Rymer, if you'll raise your right  
7 hand, please.

8 *(The oath was administered)*

9 THE CLERK: Thank you.

10 JON RYMER, PLAINTIFFS' WITNESS, SWORN

11 DIRECT EXAMINATION

12 BY MR. JACOB:

13 Q. Mr. Rymer, thank you for appearing.

14 Can you -- first, can you hear me okay?

15 A. Yes, sir, I can.

16 Q. Okay. Would you mind, then, introducing yourself to the  
17 Court, please.

18 A. Yes. My name is Jon Rymer. I am -- was formerly the  
19 inspector general at the Department of Defense from 2013 to  
20 2016. Prior to that, I was the inspector general at the  
21 Federal Deposit Insurance Corporation from 2006 to 2013. And  
22 I spent almost a year as the interim inspector general at the  
23 Securities and Exchange Commission.

24 Q. And what is your current occupation, sir?

25 A. Currently, I am working as an independent consultant to

1 two firms that do auditing and financial assurance work for  
2 the federal government.

3 Q. Okay. Let me show you Joint Exhibit 615, which has been  
4 entered in as your CV.

5 First -- I know it may appear a little blurry, but can you  
6 see the document, Joint Exhibit 615, on your screen, sir?

7 A. Yes, sir, I can.

8 Q. And are you able to read it?

9 A. Yes, I can.

10 Q. And is Joint Exhibit 615, your CV, accurately fleshing out  
11 your experience and credentials in this case?

12 A. Yes, it is. It does.

13 Q. Let me go through a couple of areas in your CV. And I  
14 want to show you page 3 of Joint Exhibit 615.

15 And can you first describe for the Court your educational  
16 background, please.

17 A. Yes, sir. I have a bachelor's of arts from the University  
18 of Tennessee. My major was economics with a minor in Asian  
19 studies. And a few years later, I completed a master of  
20 business administration at the University of Arkansas at  
21 Little Rock.

22 In terms of -- shall I proceed?

23 Q. Well, yes. And the next area I wanted to ask you about is  
24 any notable awards or recognition that you've received in  
25 your -- your career.

1 A. Yes, sir. I would say the most significant are listed  
2 here. I was named distinguished alumnus at the University of  
3 Arkansas at Little Rock. I received Distinguished Leadership  
4 Award from the Association of Government Accountants. The  
5 Institute of Internal Auditors recognized me as an -- one of  
6 the top 15 most influential auditors in the federal  
7 government.

8 Q. And what -- I'm sorry, sir.

9 What about your medal for distinguished service? Could  
10 you describe that, please.

11 A. Yes, sir. The two medals that I think I cited on here  
12 and -- one was the Army Legion of Merit, and that was really a  
13 capstone of work for my 33 years as an active and reserve  
14 soldier in the United States Army. And the other is the  
15 Distinguished Public Service Medal awarded by the Secretary of  
16 Defense for my service when I was the IG at DoD.

17 Q. Okay. Let me take you to page 2 of your CV, and I want  
18 to -- you mentioned your service in the Army.

19 First, thank you for your service.

20 And -- but, second, could you describe for the Court your  
21 experience in the Army, briefly?

22 A. Yes, sir. I initially enlisted as a cryptologic linguist  
23 and was -- spent a year at the national -- at the Defense  
24 Language Institute learning Vietnamese, later spent time at  
25 Goodfellow Air Force Base at the Air Force's School of

1 Cryptology and then later served in a military intelligence  
2 battalion in the 2nd Armored Division at Fort Hood for the  
3 remainder of my active duty service.

4 After that, I returned to Tennessee, to Knoxville,  
5 finishing my degree and also continuing to serve in the Army  
6 Reserve as an instructor. And then had stints both in the  
7 National Guard as a senior intelligence analyst and first  
8 sergeant in a company and as a sergeant -- operations sergeant  
9 major in an armored battalion. And then two stints -- three  
10 stints -- excuse me -- as a command sergeant major in National  
11 Guard units and later in Army Reserve units.

12 Q. Okay.

13 A. And I was mobilized on two occasions; one in support of  
14 Operation Desert Storm in 1990, and the second in 2004.

15 Q. And I notice here that you attended the U.S. Army  
16 Inspector General School. Could you tell us a little bit  
17 about that, please.

18 A. Yes, sir. Not long after I was appointed inspector  
19 general of the -- of the FDIC, I requested to attend, and the  
20 Army granted the Inspector General -- the Army's Inspector  
21 General course at Fort Belvoir. And I completed that course  
22 in late 2006.

23 Q. Okay. And I understand that -- you told us that you  
24 served as inspector general for various capacities in the  
25 federal government.

1 Do you remember that testimony, sir?

2 A. Yes, sir, I do.

3 Q. And to be clear, is that a position or positions that  
4 were -- required you to be appointed by the President of the  
5 United States and confirmed by the Congress?

6 A. More specifically, appointed by the President and  
7 confirmed by the Senate.

8 Q. Senate. Yes, sir.

9 And I want to -- you said that there were two inspector  
10 general roles -- two roles that you were particularly involved  
11 in?

12 A. Well, let me -- let me go back and clarify the one  
13 statement I made. I was appointed by President Bush as the  
14 inspector general of the FDIC and then later by  
15 President Obama as the inspector general of the DoD.

16 My interim appointment at the -- the work that I did at  
17 Securities and Exchange Commission, that was just -- I was not  
18 confirmed -- was not nominated or confirmed. That's a  
19 nominated -- or a position that does not require a nomination.  
20 It was only a temporary position.

21 Q. Okay.

22 A. And I'm sorry. Could you state your question again.

23 Q. Yeah. And I guess that leads me to my very next question,  
24 is what -- could you briefly describe the role of an inspector  
25 general.

1 A. The inspector general -- the way I describe it to folks  
2 that are not familiar at all, many people would be first  
3 familiar with perhaps what an internal audit function is in a  
4 corporate enterprise.

5 So the inspector general has that responsibility, to  
6 ensure that the operations of a particular organization are in  
7 compliance with laws, rules, regulations, and its own  
8 policies, as well as the organization should -- the inspector  
9 general would attempt to determine or would determine whether  
10 or not the organization was operating efficiently and  
11 effectively.

12 Now, that's a general description of internal auditing.

13 More broadly than that, the inspector general has that  
14 responsibility in a federal agency, plus the responsibility of  
15 essentially being a senior internal investigator over any  
16 criminal matters or administrative matters in the  
17 organization.

18 The inspector general also has responsibility to review  
19 instructions or regulations that the organization is  
20 influencing that may have an impact on investigations or audit  
21 activities.

22 Q. And --

23 A. So, in short, the -- the broader term that many people in  
24 the federal government are familiar with for IG  
25 responsibilities is to detect waste, fraud, and abuse in the

1 operations of a particular agency.

2 Q. Does the inspector general have oversight roles?

3 A. The inspector general's only direct oversight is to those  
4 folks of that organization that is organic to the -- to the  
5 office of inspector general.

6 In other words, the folks that -- in the case of the  
7 DoD IG, I was the inspector general there. That was an  
8 organization of about 1,600 employees and a \$300 million  
9 budget. My -- or my supervisory responsibility or directed  
10 responsibility, if you will, were only -- it only concerned  
11 those people that were organic, those 1,600 folks that were in  
12 the organization.

13 Q. Okay.

14 A. The IG's role relative to the rest of the Department of  
15 Defense, using that example, would be to find instances of  
16 waste, fraud, or abuse in the operations or criminal activity  
17 within the operations of the -- of the Department of Defense,  
18 make the appropriate leader -- make the appropriate leaders in  
19 the organization aware of it and recommend particular  
20 remediation, plans, or programs to fix whatever was found, and  
21 then monitor those -- monitor whatever those remediation plans  
22 were to see that they become -- that they're -- that they're  
23 enforced or put into place.

24 Q. Okay. Well, let me take you to Joint Exhibit 615 and  
25 page 1 of your CV, and focus on what you mentioned -- your

1 role as inspector general of the United States Department of  
2 Defense.

3 You should see that on your screen shortly.

4 A. Yes, sir, I do.

5 Q. How many investigations did you conduct or were you  
6 involved in in your roles as inspector general, both in the  
7 Department of Defense and in the FDIC?

8 A. Well, in terms of the number of -- you know, the rough  
9 number I remember looking at recently, one of the semiannual  
10 reports that I sent to Congress in 2015, I think, listed the  
11 number as -- if I could just look at a piece of paper from  
12 that report. It was --

13 MR. STERN: Objection. Can we at least get an  
14 understanding of what --

15 THE WITNESS: About 150 investigations.

16 THE COURT: One second, sir.

17 THE WITNESS: I'm sorry.

18 THE COURT: One second.

19 MR. STERN: It's unclear to the United States what  
20 Mr. Rymer's even looking at right now.

21 THE COURT: Mr. Rymer, what are you looking right  
22 now?

23 THE WITNESS: I looked at, sir, a piece of paper --  
24 an excerpt from the Department of Defense semiannual report,  
25 dated October 1st through March 31st, 2015.



1 MR. STERN: Yeah. I don't believe this is an exhibit  
2 in this --

3 THE WITNESS: I'm sorry. If I shouldn't be looking  
4 at it, I won't look at it any further. I apologize.

5 THE COURT: So I think we're still trying to prove  
6 him up as an expert, and so there's no need for him to be  
7 looking at extrinsic reports at this stage.

8 MR. JACOB: You're right, Your Honor. I was just  
9 asking his background.

10 THE COURT: Oh.

11 So, Mr. Rymer, if you will avoid looking at that report  
12 for now. Let's just continue with your background.

13 That's sustained.

14 THE WITNESS: Yes, sir. My apologies.

15 BY MR. JACOB:

16 Q. Mr. Rymer, could you tell the Court how many  
17 investigations that you've been involved in over the course of  
18 your career as an inspector general, both in the Department of  
19 Defense and FDIC.

20 A. I would say several hundred, sir, just to be --

21 Q. And specifically -- and specific to your role as inspector  
22 general of the Department of Defense, have you conducted  
23 investigations into the military branches?

24 A. Well, the organization that I supervise conducted --

25 Q. Yes.

1 A. -- investigations into the military branches, yes, sir.

2 Q. And can you give the Court some examples of the types of  
3 investigations that the inspector general conducted into the  
4 military branches while you were inspector general of the  
5 Department of Defense?

6 A. Well, most typically, the Department of Defense inspector  
7 general -- within the Office of Inspector General, there is a  
8 group called the Defense Criminal Investigative -- the Defense  
9 Criminal Investigations.

10 And that organization of about 500 or so employees, mostly  
11 criminal investigators, the general focus was on -- much of  
12 that focus was on procurement fraud and essentially  
13 white-collar investigations about how either procurement -- or  
14 how money is spent or, perhaps, improperly spent -- excuse  
15 me -- within the Department of Defense.

16 Q. Okay. Let me take down your CV for a second and talk to  
17 you about your role as inspector general.

18 In that role, did you familiarize yourself with the  
19 various instructions and processes that apply to the inspector  
20 general and his office?

21 A. Yes, sir, I did.

22 Q. And did you familiar -- do you have a familiarity and  
23 expertise in that process of investigating and oversight that  
24 the inspector general's office provides the U.S. government  
25 and DoD, in particular?

1 A. Yes, sir. And I would say more broadly -- within the  
2 inspector general community or profession, I would say more  
3 broadly than just investigations. I had to be familiar with  
4 how investigations are conducted, evaluations, audits.  
5 They're all -- they're all processes supporting each of those.

6 So investigation is a particular discipline within the  
7 IG -- within an IG's operation. But I was familiar with  
8 investigations and familiar with valuations, and particularly  
9 familiar with the structure and requirements of federal  
10 audits.

11 MR. JACOB: Okay. Your Honor, at this time,  
12 plaintiffs offer Mr. Rymer as an expert in the inspector  
13 general process as well as the government oversight  
14 procedures.

15 MR. STERN: We do object and look forward to the  
16 opportunity voir dire this witness, Your Honor.

17 THE COURT: You can attempt to do it now.

18 MR. STERN: Thank you.

19 **VOIR DIRE EXAMINATION**

20 BY MR. STERN:

21 Q. Mr. Rymer, good morning, sir.

22 A. Good morning.

23 Q. Can you hear me okay?

24 A. You're a little bit soft, but I think I can make it out.

25 Yes, sir.

1 Q. I'll try to speak up. How about this? Can you hear me  
2 better?

3 A. That's better. Thank you.

4 Q. Thank you.

5 Mr. Rymer, you are an accountant; correct?

6 A. Yes, sir. I would prefer the title "auditor." But yes,  
7 sir.

8 Q. I'll give you "auditor." Sure.

9 You're an auditor?

10 A. That's one of the things I've done in my career, yes, sir.

11 Q. Okay. Well, if we take a look at Joint Exhibit 615, the  
12 summary, it starts out "Financial services and auditing  
13 professional with over nine years of experience as an  
14 inspector general in the federal government, over seven years  
15 as a director at a Big Four accounting firm, and over 15 years  
16 of experience in the banking industry."

17 Did I read that correctly?

18 A. Yes, sir. That's correct.

19 Q. So your experience is in banking and financial services?

20 A. My civilian experience, yes, sir.

21 Q. Okay. It continues, "Served on a number of federal boards  
22 and committees, principally concerned with financial oversight  
23 and accounting and auditing guidance and standards."

24 Did I read that correctly?

25 A. Yes, sir.

1 Q. So, again, the primary concern on the boards that you  
2 served on were financial oversight and accounting and  
3 auditing?

4 A. Yes, sir. That's correct.

5 Q. Again, it continues, "Testified on multiple occasions  
6 before the United States Congress on auditing and inspector  
7 general issues"?

8 A. Yes, sir. That's correct.

9 Q. So your principle concern is with financial oversight,  
10 accounting, auditing, guidance, and standards; is that  
11 correct?

12 A. That's my principal experience, yes, sir.

13 Q. Okay. And your current position is with Lynch  
14 Consultants?

15 A. I'm a -- I'm now a contractor for Lynch Consultants, yes,  
16 sir.

17 Q. And if we look down at the bottom half of 615, under  
18 principle of Lynch Consultants, "Responsible for leading  
19 multiple audit and accounting support engagements at federal  
20 agency clients."

21 Did I read that correctly?

22 A. Yes, sir, you did.

23 Q. Sir, you are not a criminologist?

24 A. No, sir, I'm not.

25 Q. You're not a forensic neuropsychiatrist?

1 A. No, sir.

2 Q. You're not an epidemiologist?

3 A. No, sir.

4 Q. You have no expertise in federal or state regulation of  
5 firearms?

6 MR. JACOB: We're not offering him for an expert in  
7 any of these areas.

8 THE COURT: Yeah. I don't understand the  
9 epidemiology one, in particular.

10 MR. STERN: Well, I don't understand what exactly  
11 expertise they are offering him for, then. There's no  
12 question about the procedures for creating an IG report at  
13 issue in this case.

14 MR. JACOB: Absolutely.

15 MR. STERN: They're simply trying to use his title as  
16 the former Department of Defense inspector general to bolster  
17 the underlying findings of an IG report.

18 But as I was about to go into, he has no direct experience  
19 actually investigating DCIOs, MCIOs. He has no personal  
20 experience actually reviewing any of the material that  
21 undergirds any of the IG reports.

22 He simply was the head of an oversight entity without  
23 really knowing the nuts and bolts of these investigations  
24 themselves. And that's what I was going to get into.

25 MR. JACOB: Your Honor, that goes to the weight that

1 Your Honor places on his testimony, not its admissibility.  
2 And we do dispute the characterizations that the government  
3 has asserted.

4 The government is disputing what their own inspector  
5 general has found in various reports. And so we are allowed  
6 to explore the reliability of those opinions and those  
7 findings with a person like Mr. Rymer, who has over -- or  
8 nearly ten years of experience as an inspector general.

9 MR. STERN: But that's just it, Your Honor. He's  
10 actually not here to testify about the substance of the IG  
11 reports. They offered him as an expert on the IG's policies  
12 and protocols for creating these reports.

13 We don't dispute that the IG has set guidance for how they  
14 create these reports. But if he can't testify regarding the  
15 substance of them, then his testimony is meaningless and is  
16 only trying to serve to bolster the IG reports, in and of  
17 themselves.

18 THE COURT: So give me just a handful of exemplar  
19 questions you intend to ask him.

20 MR. JACOB: Sure. A prime example, Your Honor, is  
21 the government has disputed when and where the probable cause  
22 arose, the types of investigations that the IG conducted into  
23 probable cause.

24 And the areas that I intend to explore with Mr. Rymer is  
25 the processes in place with the inspector general and whether

1 those processes result in reliable conclusions by an inspector  
2 general in the various reports that are at issue in this case  
3 and that the government disputes.

4 MR. STERN: That's like saying a police department  
5 has policies and procedures for making probable cause  
6 determinations which wouldn't necessarily go to the nuts and  
7 bolts of whether probable cause actually exists at any given  
8 time.

9 I mean, again, they're just trying to use the stature of  
10 this witness to bolster the underlying substance of a DoD IG  
11 report.

12 THE COURT: But doesn't that happen all the time in  
13 1983 cases, for example? The policeman who's charged with  
14 excessive force will bring some kind of chief of police,  
15 retired, to testify that "Oh, no, this place had policies,  
16 procedures. This is" -- so why isn't it similar to that?

17 MR. STERN: Because they've already done that with  
18 Colonel Youngner. And to the extent Colonel Youngner can  
19 actually speak about the Air Force's instructions, manuals,  
20 and so on and so forth, we didn't dispute that he had  
21 expertise in that narrow field.

22 But here, with regards to the DoD IG, they produced 500  
23 reports on various topics throughout the years. He couldn't  
24 possibly know the underlying -- not just the underlying  
25 substance of when there was probable cause in any given



1 moment, but even the underlying policies and procedures that  
2 the -- that the Air Force -- either the Office of Inspector  
3 General -- I'm sorry -- the Office of Special Investigations  
4 or the Security Forces Squadron relied on to make those  
5 determinations.

6 It's simply too -- it's too wide of a scope, that the  
7 DoD IG has, to be able to make any type of expertise -- to  
8 provide any expertise on these issues.

9 MR. JACOB: But he's very familiar with the methods  
10 that the DoD IG uses, and can tell us whether those methods,  
11 as applied to the particular reports in this case, did result  
12 in reliable conclusions.

13 MR. STERN: No more so than Your Honor can read the  
14 instruction manuals himself and make those determinations.

15 THE COURT: Yeah. So this all goes to the weight.  
16 Mr. Rymer led and was the inspector general for the Department  
17 of Defense. He was awarded high honors for that. So we now  
18 can't claim, as the government, "Well, he knows nothing."  
19 That's kind of inconsistent.

20 But to the extent that, you know, this does go to the  
21 weight, I'll see what weight, if any, I attribute to any of  
22 the opinions he may render.

23 Do you want to continue to challenge him or --

24 MR. STERN: We'll do it on cross, then, Your Honor.

25 THE COURT: Thank you.

1 MR. STERN: Thank you.

2 THE COURT: So he's recognized as an expert on IG  
3 practices and protocols.

4 Your questions now?

5 DIRECT EXAMINATION (CONTINUED)

6 BY MR. JACOB:

7 Q. Mr. Rymer, can you hear me again?

8 A. Yes, I can.

9 Q. Okay. Mr. Rymer, I want to start out by talking to you a  
10 little bit about the background of the inspector general and  
11 specifically ask you what the mission of the DoD IG -- or DoD  
12 inspector general is.

13 A. Well, the mission, in a thumbnail, would be to find waste,  
14 fraud, and abuse in the programs and operations of the  
15 Department of Defense.

16 Q. Okay. And can you briefly describe the powers the IG has  
17 in accomplishing that mission?

18 A. Well, the IG has unlimited access to all books and records  
19 of the Department of Defense and has subpoena authority, has  
20 testimonial subpoena authority as well, to reach, say, retired  
21 members of the department. So the IG has broad authority to  
22 seek out facts and information within the Department of  
23 Defense.

24 Q. Okay. And let me take you now to this case, in  
25 particular. And can you briefly describe what you were asked

1 to do in this case.

2 A. Well, what the Office of Inspector General was asked to do  
3 after the tragedy and -- the shootings at Sutherland Springs,  
4 the secretary of defense asked the IG to determine whether or  
5 not there was -- there was immediate concern, I think, during  
6 the -- once the investigation began, the day of the shooting,  
7 that the Air Force had not forwarded criminal history  
8 information, specifically disposition of Kelley's -- of  
9 Kelley's court-martial, nor several occurrences where the  
10 Air Force had collected Kelley's fingerprints.

11 It was the belief and summary of the IG that those should  
12 have been forwarded to the FBI, and they were not. That was a  
13 concern that the secretary of defense had. And the secretary  
14 of defense directed that the Office of Inspector General  
15 conduct an investigation or an evaluation of the circumstances  
16 around whether or not those fingerprints and final disposition  
17 information was given to the FBI.

18 Q. Okay. And can you describe the types of documents you  
19 reviewed in your review of this case.

20 A. Well, the documents that I reviewed were several IG  
21 reports, several -- to get a sense of the accuracy of those  
22 reports, several depositions of informations -- of individuals  
23 that were interviewed by the IG. And then refamiliarized  
24 myself with a number of standards regarding the requirements  
25 around a -- the requirements around the production of an

1 evaluation report, which this one is -- meets those standards.  
2 The -- and I refamiliarized myself with the -- and certainly  
3 spent time reviewing the IG Act.

4 But, in summary, that's what I -- what I looked at.

5 Q. Okay. And particularly concerning the 2018 DoD IG report  
6 that you mentioned into the Air Force's failure to submit  
7 Devin Kelley's criminal history to the FBI, did you also  
8 review the underlying documents that were reviewed by the  
9 DoD IG in that report?

10 A. Well, I don't -- I don't recall documents. I do -- well,  
11 in a sense, the documents, being depositions, sworn testimony  
12 by many of the agents involved, yes, sir, I did.

13 Q. Okay. And we'll go through the -- each -- the report and  
14 some of the documents to identify them, in particular.

15 But in your review and reaching your report in this case,  
16 do you believe you had sufficient information and evidence to  
17 reach reliable opinions on the inspector general process that  
18 resulted in the reports that you mentioned to the Court just  
19 now?

20 A. Yes, sir.

21 Q. Okay. And what I want to do, just to signpost for you, is  
22 I want to get to the Devin Kelley report, but I want to give  
23 just a brief background of a couple of the DoD IG inspector  
24 general reports that were issued prior to the Devin Kelley  
25 report.

1 And let me do that by showing you, first, Joint  
2 Exhibit 14, page 1.

3 And, Mr. Rymer, have you seen Joint Exhibit 14 before?

4 A. Yes, sir, I have.

5 Q. And can you tell the Court what Joint Exhibit 14 is.

6 A. Well, I believe what you have on the screen is a cover  
7 page from a DoD IG report that was issued, I believe, in 1997.  
8 And it concerns criminal history data reporting and the  
9 submission of criminal history from the defense criminal  
10 investigative organizations to the FBI.

11 Q. Okay. Let me show you page 3 of Joint Exhibit 14.

12 And I'll zoom in to it -- if you can zoom back out  
13 please -- and zoom in to the entire executive summary portion  
14 for us.

15 A. Yes, sir, I see that.

16 Q. And I'm going to provide you the executive summary here.

17 First, could you tell us why the DoD IG is investigating  
18 and reporting in 1997 on DoD's criminal history submissions to  
19 the FBI?

20 A. Yes, sir, I can. I would go back -- would go back to the  
21 Inspector General Act in terms of -- to give you an  
22 explanation why I believe this report was done originally.

23 The Inspector General Act says that the DoD IG is one of  
24 the few policy responsibilities that the IG has, and that is  
25 to set Department of Defense policy regarding criminal

1 investigations. And so that authority, I believe, resulted in  
2 a -- in a memo in -- I believe it was 1987 to determine  
3 whether -- how often the DCIOs were actually submitting  
4 information to the FBI. And I don't have the numbers in front  
5 of me, but the compliance rate was very low.

6 The IG believed it was in the best interest of both the  
7 Department of Defense and for -- and for public safety that it  
8 was important to forward to the FBI, for inclusion in the  
9 national criminal database, information about crimes that had  
10 been committed by service members.

11 Q. Okay.

12 A. Okay. So that was the foundation of the 1987 memo.

13 And the IG followed up in 1997 with this -- with this  
14 report, again, finding that there were -- there was  
15 significant noncompliance with criminal history data reporting  
16 to the FBI.

17 I think, in sum, this report also -- this -- it  
18 recommended that the -- in addition to the criminal  
19 investigative organizations, that, essentially, the military  
20 police functions within each of the services also began  
21 criminal history data reporting.

22 Q. Okay. Mr. Rymer --

23 A. And the foundation of -- I'm sorry.

24 Q. Let me just break that up. And you gave us a lot, so I  
25 need to kind of focus you a little bit and ask you some more

1 specific questions.

2 First of all, you used phrases like the "DCIOs." And I  
3 see on the screen "MCIOs" is another acronym that the  
4 government is using.

5 First, can you just tell us what a DCIO and an MCIO is.

6 A. Well, DCIO is defense criminal investigative -- defense  
7 criminal investigation organization.

8 And what was your second question?

9 Q. And what is an MCIO?

10 A. Military criminal -- I use the term MP. But essentially,  
11 that's the police function within each of the departments.

12 And I'm sorry. I'm a -- I was a career soldier. So I use  
13 the term M -- "military police," and they're called different  
14 things in the other services. But essentially to take that  
15 military police -- military -- that responsibility to report,  
16 to that police function within the -- within the services as  
17 well.

18 Q. So with regard to the -- we're here about the Air Force.

19 With regard to the Air Force, the military police would be  
20 currently known as the security forces?

21 A. Yes, the security forces, yes, sir.

22 Q. And would the Air Force Office of -- Office of Special  
23 Investigations be covered by this report, Joint Exhibit 14, as  
24 well?

25 A. Yes. The Air Force Office of Special Investigation was

1 a -- is a defense criminal investigative organization.

2 Q. Okay. So the next question I want to direct you to is,  
3 are you familiar with NICS, the National Instant Criminal  
4 Background Search system?

5 A. Yes, sir.

6 Q. Okay. And do you know when NICS was established?

7 A. It was sometime, I believe -- I believe, in the 1990s,  
8 and -- I believe in 1993 timeframe, something like that.

9 Q. And do you know when NICS reporting began with the  
10 criminal investigative organizations in DoD?

11 A. I believe that would have been, sir, after the Brady Act  
12 or the Brady Act amendments. And so that would have been  
13 sometime during -- in the 1990s.

14 Q. Would it have been after this report?

15 A. No. It would have been, I believe, before this report --  
16 I believe, the dates.

17 Q. Well, let me ask you this: With regard to -- you told the  
18 Court earlier that in 1987, the Air Force issued an  
19 instruction to start reporting criminal history to the FBI.

20 Do you remember that testimony, sir?

21 A. Yes.

22 Q. And then you said in 1997, so ten years after the issuance  
23 of that report, the DoD IG came out with this inspector  
24 general's report concerning the reporting of criminal history  
25 to the FBI.



1 Do you remember that testimony, sir?

2 A. Yes. Yes.

3 Q. Could you tell us, beyond reporting to NICS, is there any  
4 reasons why the DoD IG is concerned with criminal -- the  
5 military organization's criminal history reporting to the FBI?

6 A. Well, I think the view -- and I certainly support this  
7 view -- that criminal history reporting to the FBI essentially  
8 expands the effectiveness of law enforcement and gives -- by  
9 supporting the national criminal database, in my view, makes  
10 law enforcement more effective.

11 So I think it's certainly in the interest of the  
12 Department of Defense and ultimately in the national interest  
13 to have a law enforcement function that is as -- that is as  
14 effective as possible. And by not reporting criminal history  
15 data consistently to the FBI, I believe that a significant  
16 portion of criminal activity would not have been included in  
17 the national crime data.

18 Q. In 1997, was the Air Force aware of these problems, as  
19 reported by the Department of Defense inspector general?

20 A. They would have been aware -- they certainly would have  
21 been aware in the sense that the inspector general -- the  
22 Department of Defense inspector general, certainly from the  
23 work beginning back in the late '80s to 1987 work,  
24 continuing through this report, for a couple of reasons.

25 One, let me say that this particular report was -- this

1 particular 1997 report was -- was completed due to a -- due  
2 to -- or due to a requirement in the National Defense  
3 Authorization Act in 1996 that the secretary of defense review  
4 compliance with criminal history data reporting. So the  
5 secretary of defense directed the DoD IG to complete this  
6 report.

7 So this report -- although the earlier instances may have  
8 been at the discretion and direction of the DoD IG and their  
9 authority under the IG Act for the 1987 work, the 1997 work  
10 was a result of a -- was the result of the defense criminal --  
11 or I'm sorry -- was the result of the NDAA, the National  
12 Defense Authorization Act.

13 Q. Did the Air Force review these findings in Joint  
14 Exhibit 14 and notify the IG that they were going to fix  
15 these -- the issues?

16 A. Yes, sir. As I recall, the Air Force -- the Air Force did  
17 not object to -- did not -- the Air Force concurred with the  
18 findings and indicated that they would begin a process to  
19 improve compliance. Yes, sir.

20 Q. Okay. And following this 1997 report, are you aware of  
21 any other reports the DoD IG has issued concerning  
22 fingerprints and final disposition submissions to the FBI?

23 A. Yes, sir. There was a -- I think the next report was --  
24 specifically about fingerprints and final disposition reports  
25 was the 2015 report that followed up on this 1997 report. And

1 I think -- although there was some improvement, I think there  
2 was still significant noncompliance with the criminal history  
3 data reporting.

4 And in a -- not referring to the -- any paperwork, I would  
5 say that the number was still then in the 30, 32 percent  
6 range, as I recall.

7 Q. Well, Mr. Rymer, let me show you that report. We can look  
8 at it briefly. I want to show you Joint Exhibit 1, which has  
9 been previously admitted into evidence.

10 Can you identify Joint Exhibit 1, sir?

11 A. Yes, sir. That's the report I was referring to.

12 Q. Okay. Let me show you page 3 of Joint Exhibit 1. And,  
13 first, I want to sort of zoom in on the "Objective" section.

14 Do you see the column labeled "Objective"?

15 A. Yes, sir.

16 Q. Could you tell the Court what the objective of the DoD IG  
17 in Joint Exhibit 1 is, briefly?

18 A. Well, as I said a moment ago, the objective would be to  
19 determine compliance with criminal history data reporting to  
20 the FBI and to see where that compliance stands. And the  
21 method used here was a sampling process.

22 But as you can see, I think this goes through in some  
23 detail how each of the -- each of the services were complying  
24 or not complying with criminal history data reporting  
25 requirements.

1 Q. And you said the method that the IG uses in Joint  
2 Exhibit 1 is a sampling process.

3 What time frame are they sampling?

4 A. -- the interview. But I think in this case and -- or in  
5 this particular report, there were, in this case, I think, a  
6 sample of 1,102 case files from Army, Navy, Air Force, Marine  
7 Corps. And you can see there the numbers. I'm not sure it's  
8 necessary that I read them. But you can see that a  
9 significant sample was taken, and the results of the sample  
10 were, there was noncompliance.

11 Again, I don't think this excerpt shows it, but I think --

12 Q. Yeah.

13 A. -- in the 30 percent range, as I recall, for the  
14 Department of the Air Force of noncompliance.

15 Q. Well, sir, let me ask you this -- and we'll get to those  
16 specific findings in one second -- but it says that the sample  
17 was taken of qualifying offenses between June 1, 2010, and  
18 October 31st, 2012.

19 Do you see that, sir?

20 A. Yes, sir, I do.

21 Q. And if Devin Kelley's conviction was in November 7th of  
22 2012, does that sample cover Devin Kelley's conviction?

23 A. No, sir. It does not.

24 Q. Okay. So let's look at the findings and talk about that  
25 in more particular, then. And I want to show you actually

1 Joint Exhibit 1, page 13 and 16.

2 And there are a couple of graphs on pages 13 and 16  
3 concerning the Air Force fingerprint submission data and  
4 criminal history data that I want to look at in particular.

5 So let me display both of those pages, Joint Exhibit --  
6 Joint Exhibit 1, pages 13 and 16 together.

7 First, Mr. Rymer, are you able to see the graph concerning  
8 the Air Force's fingerprint submissions?

9 A. Yes, sir, I am.

10 Q. And if we could just make that portion a little bit bigger  
11 for Mr. Rymer, please.

12 TECHNOLOGY SPECIALIST: Bottom left?

13 MR. JACOB: Yes.

14 And then if we could also pull out the Air Force's final  
15 disposition graph.

16 BY MR. JACOB:

17 Q. And, Mr. Rymer, if you could explain to the Court what  
18 we're looking at from pages 13 and 16 of Joint Exhibit 1.

19 A. Well, this -- of the total sample, I think, that we read a  
20 moment ago, of 1,100 or so cases that were reviewed, this  
21 would be -- the sample pertaining to the Air Force would have  
22 been about 358 cases, and the -- you can see the totals there  
23 of fingerprint -- 248 of the cases, fingerprints were found.  
24 And in -- and in 110, they were not.

25 Q. Okay. So if I'm understanding you correctly, the DoD IG

1 is looking at 358 qualifying cases in that sampling period  
2 from the Air Force. Is that fair?

3 A. Yes.

4 Q. And of those cases, 113 final dispositions were not  
5 submitted and 111 -- or sorry, 110 fingerprints were not  
6 submitted to the FBI?

7 A. Yes.

8 Q. Okay. Before an IG reaches a finding or reviews documents  
9 and concludes there's missing submissions, does the Air Force  
10 have an opportunity to review drafts of reports and  
11 conclusions such as this?

12 A. Yes, sir, they do. Number one, to explain a little  
13 broader, the Air Force would have been involved in this data  
14 collection initially. This is not done -- well, the Air Force  
15 would have been involved in the data collection.

16 And then once the -- a draft report is prepared, the  
17 Air Force, as a subject of the report, would have had an  
18 opportunity to comment on the report or correct any mistakes  
19 that they saw in the report before the report is issued and  
20 final.

21 Q. Okay. So as a part of the IG report-issuing process, the  
22 agency itself has input into the report?

23 A. Well, in this case, the agency -- well, the data belongs  
24 to the Air Force. So in the sense that the inspector general  
25 requested data from the Air Force, the Air Force would assist

1 in collecting that data for the -- for the inspector general.  
2 And then once the inspector general -- the Department of  
3 Defense inspector general reviewed the data, the Air Force  
4 would have the opportunity to point out any errors or missing  
5 data or any significant problems with the report.

6 Q. Okay. And you said that the Air Force would then also  
7 have an opportunity to comment on the recommendations?

8 A. Yes, they would.

9 Q. Okay. Let me take you --

10 A. Uh-huh.

11 Q. Let me take you to page 18 of Joint Exhibit 1 and show you  
12 some of these comments. And I want to blow up both the  
13 recommendation and the Air Force comments and the IG response  
14 to the Air Force comments.

15 Okay. And can you tell the Court what we're seeing on  
16 page 18 of Joint Exhibit 1.

17 A. Well, you would be seeing, number one, one of the  
18 recommendations -- and I don't remember in this particular  
19 report how many there were. But an evaluation such as this  
20 would result in a number of recommendations for process  
21 improvement directed to the service secretaries.

22 In this recommendation, that -- this recommendation was  
23 that the Air Force take prompt corrective action to ensure  
24 that all future arrestees and convicted offenders conform with  
25 the applicable DoD instruction, which is DoD 5505.11.

1 And I think the phrase below or the next section  
2 "Air Force comments: The Air Force agreed with our  
3 recommendation and our response," meaning the DoD's response.  
4 "Comments from the Air Force addressed all specifics of the  
5 recommendation. No further comments are required."

6 So what that says to me is the Air Force agreed with the  
7 recommendations; set forth specific remedies, if you will, to  
8 cure the problems that were identified by the DoD inspector  
9 general. And the DoD inspector general accepted that  
10 remediation -- or those -- accepted the steps that the  
11 Air Force planned to take to fix the problem.

12 Q. And this report, Joint Exhibit 1, was issued in 2015.

13 Who was the DoD inspector general in 2015?

14 A. I was, sir.

15 Q. Okay. And earlier we talked about how the specific sample  
16 set that this inspector general's report reviewed did not --  
17 was not -- or Devin Kelley's conviction fell out of that  
18 specific sample set.

19 But does this recommendation make it clear to the  
20 Air Force that there was an ongoing problem with the failure  
21 to submit criminal history to the FBI?

22 MR. STERN: Objection, Your Honor. The Court's  
23 already ruled on this issue. We've both briefed it -- both  
24 parties briefed it at summary judgment. The Court has already  
25 ruled that the Air Force adoption of the IG recommendations



1 did not -- did not include the requirement to submit Devin  
2 Kelley's criminal history information. This has already been  
3 adjudicated and now is outside the scope of the -- what's left  
4 for this trial.

5 MR. JACOB: My question was about the Air Force's  
6 awareness of the ongoing obligation, and that goes directly to  
7 the knowledge and foreseeability the Air Force had.

8 The United States is disputing that this document made the  
9 Air Force aware and reinforced the notion that they need to  
10 submit criminal history to the FBI, and this is the IG  
11 testifying about that very point.

12 THE COURT: Yeah. That's overruled.

13 BY MR. JACOB:

14 Q. Mr. Rymer, let me ask my question to you one more time.

15 Earlier we discussed how the -- Devin Kelley's conviction  
16 fell outside of the specific sample set that JEX 1 examined.

17 But my question to you is, does Recommendation 2, not  
18 concerning the specific sample set but the more broader  
19 recommendation, make the Air Force aware of its ongoing  
20 obligation to report and fix criminal history reporting to the  
21 FBI?

22 A. Yes, sir. I believe it clearly makes the Air Force aware.

23 Q. Okay. And I want to -- I want to play for you a clip  
24 that -- of evidence that's already been entered, and then come  
25 back to this report.

1 I want to play for you Joint Exhibit 628 from 1 hour  
2 54 minutes and 47 seconds to 1 hour 55 minutes and 7 seconds,  
3 and then ask you a question about that. Okay?

4 A. Yes, sir.

5 *(Playing video)*

6 MR. JACOB: Okay. We can play that one more time.

7 *(Playing video)*.

8 BY MR. JACOB:

9 Q. Can you tell us who that is on the video, Mr. Rymer?

10 A. Yes, sir. That's Glenn Fine. I believe he was the acting  
11 inspector general of the Department of Defense. That probably  
12 would have been a hearing in 2017, I believe.

13 Mr. Fine was originally -- I brought Mr. Fine to DoD as  
14 my -- as the deputy inspector general in 2015. So when I left  
15 the department in 2006, he became the acting inspector  
16 general.

17 Q. Okay. Let me take down the video now and then ask you  
18 this question.

19 If the Air Force, in this litigation, disagrees with you  
20 and Mr. Fine on this -- these recommendations and whether they  
21 made the Air Force aware of their ongoing problem to report  
22 and fix criminal history, how would you respond to that?

23 MR. STERN: Objection. Speculation. Outside the  
24 scope of his expertise.

25 MR. JACOB: I'm asking him how he would respond to

1 this issue.

2 THE COURT: Yeah. That's overruled.

3 BY MR. JACOB:

4 Q. Sir, Mr. Rymer, how would you respond to the Air Force in  
5 this litigation taking a different position than it did when  
6 this report was issued?

7 A. Well, I would be, frankly, disappointed if that's what had  
8 happened. The -- if that's what happened. My view, it was  
9 very clear the Air Force agreed with the findings and  
10 recommendations of the report and the -- and I want to go back  
11 to this notion of how aware the Air Force would have been  
12 about this.

13 I mean, the information contained in that report would  
14 have been part of what would have been gathered with the  
15 assistance of the inspector general function within the  
16 Department of the Air Force. That's routine for the DoD  
17 inspector general. When they're reaching out for information  
18 from the services, it is done through the IG mechanism, if you  
19 will, in each of -- in each of the services.

20 In this case, I would also like to point out that this  
21 level of awareness for the Air Force would be, I think,  
22 particularly high because of the organization structure of the  
23 Department of the Air Force relative to its defense criminal  
24 investigative function.

25 The defense criminal investigative function in the Army

1 and the Navy, for example, are independent of the inspector  
2 general function -- or the inspector general within each of  
3 those services. That's not the case in the Air Force. The  
4 Air Force Office of Special Investigations is an  
5 organizational entity under the command and control of the  
6 inspector general of the Air Force.

7 Q. Okay.

8 A. And that's unique for the three services.

9 Q. If I can try to understand and break down that testimony  
10 briefly.

11 With regard to the Air Force, who is the inspector general  
12 of the Air Force?

13 A. The inspector general of the Air Force would be a  
14 three-star officer. And at the time, I think it was General  
15 Biscone. I'm not certain who the inspector general is today.

16 But it's a -- it's a three-star position that would report  
17 to the chief of staff of the Air Force. In other words,  
18 essentially the military commander of the Air Force --

19 Q. Okay.

20 A. -- would be the inspector general's boss, if you will.

21 Q. Does the inspector general of the Air Force hold any  
22 positions or any hats -- wear any hats other than just the  
23 inspector general of the Air Force?

24 A. Well, in addition to being the inspector general, the  
25 inspector general of the Air Force is also the commanding

1 general responsible for the Air Force Office of Special  
2 Investigations.

3 Q. Okay. And this goes back to the question of the  
4 Air Force's knowledge of the problems.

5 If the DoD IG is telling the Air Force inspector general  
6 that there is a significant problem with reporting criminal  
7 history to the FBI in the Office of Special Investigations,  
8 are they directly telling the commander -- the chain of  
9 command of the office of inspector -- of Special  
10 Investigations of that problem?

11 A. Yes. Yes, sir. I believe they would be.

12 Q. And so the command structure -- the supervisory command  
13 structure of the Office of Special Investigations would have  
14 specific knowledge and direct knowledge of what the DoD IG is  
15 reporting in the 1997 and the 2015 IG reports?

16 A. Yes, sir. I believe so.

17 Q. Okay. So with that background, let's look now at Joint  
18 Exhibit 3. And I want you to identify -- I'm going to show  
19 you the first page of Joint Exhibit 3, and I want you to  
20 identify it for us. Okay?

21 Are you seeing Joint Exhibit 3 on your screen, sir?

22 A. Yes, sir, I do.

23 Q. Could you identify for the Court what Joint Exhibit 3 is.

24 A. Yes, sir. This would have been the report prepared by the  
25 Office of Inspector General of the Department of Defense at

1 the request or direction of the secretary of defense to  
2 determine if and how there was a failure by the Air Force to  
3 submit Devin Kelley's criminal history to the FBI.

4 Q. Okay. And what I want to do for the Court, just so you're  
5 aware of where I want to go, is I want to show the processes  
6 the inspector general uses to lead to the findings that it  
7 does in a report such as Joint Exhibit 3.

8 But I don't want to belabor the point and go through every  
9 single finding and talk about each one. So if you think it  
10 would be helpful, what I would like to do, sir, is look at one  
11 or two findings and talk to you about how an inspector general  
12 reaches those findings and whether those findings can be  
13 reliable, in your opinion.

14 Do you think that would be helpful, sir?

15 A. Yes, sir.

16 Q. Okay. Let me show you page 66 of Joint Exhibit 3. And  
17 we'll zoom in to that first part. And I'll represent to you  
18 this is a finding concerning the first missed opportunity to  
19 submit fingerprints. And if we could just zoom in to the  
20 entire first section. Yes.

21 This is the -- Joint Exhibit 3, page 66, is the beginning  
22 of the IG's section on the first missed opportunity to submit  
23 Devin Kelley's fingerprints, from June 9th, 2011.

24 Do you see that on your screen?

25 A. Yes, sir.

1 Q. Now, in talking about a finding like this, could you  
2 briefly describe to the Court the types of information the  
3 inspector general's office relies upon in reaching a finding  
4 such as this.

5 A. Well, certainly, they would rely on documentary  
6 information. That would be any files or written information  
7 about the Kelley investigation that the U.S. -- that the  
8 Air Force had, the inspector general would have reviewed.

9 And then they would have conducted -- and I believe this  
10 particular section goes through some detail about the  
11 particular interviews with the case agents and the supervisors  
12 involved in this case.

13 So the DoD IG would have reviewed documentary evidence and  
14 testimonial evidence -- or actually conducted interviews in  
15 this regard to make this determination.

16 Q. Okay. And let's look -- well, let me ask you this: You  
17 know, the office of DoD IG, I assume, is not an expert on the  
18 specific subject matters that they investigate, necessarily?

19 A. Well, I would -- I would -- I would back up just a moment.

20 The team that conducted or produced this particular report  
21 would have been a multidisciplinary team. And it would have  
22 contained evaluators, most likely auditors, administrative  
23 investigators, and certainly criminal investigators, would  
24 have all been part of the team developing this report.

25 So your question is -- if your statement was that the IG

1 would -- the IG's expertise would not necessarily include  
2 criminal investigation or criminal investigation techniques, I  
3 would -- I would disagree with that.

4 I'm certain, if -- I'm certain that the -- well, let me --  
5 let me back up and say reports of -- like this that were  
6 prepared during my tenure would have included a team that  
7 included criminal investigators that were experienced --  
8 experienced in conducting criminal investigations.

9 Q. And that's exactly what I was getting at, sir.

10 Does the IG's office, when they conduct an investigation  
11 like this, have access to the lawyers, legal staff, criminal  
12 investigators -- really, the subject matter experts -- that  
13 allows them to reach conclusions such as the one that it  
14 reached in Joint Exhibit 3, page 66?

15 A. Yes, sir, they do.

16 Q. Okay. Let me show you, then, another example finding.  
17 And I will show you page 98 of Joint Exhibit 3. 98. And  
18 we'll zoom in to the -- really, the first and a half of the  
19 second paragraph under "3. AFOSI operations tempo." Yes.

20 And, sir, I'll just represent to you here that the IG here  
21 is looking at various investigations at -- specifically at  
22 Detachment 225. And the question the IG is posing is whether  
23 the failure to submit Devin Kelley's fingerprints is an  
24 isolated incident or a systemic problem at this time.

25 My question to you, sir, is when -- is the DoD IG's



1 examination into systemic problems something that the DoD IG  
2 regularly conducts?

3 A. Well, the systemic problem in terms of -- had certainly  
4 been pointed out in the 2015 report. So "regularly conducts,"  
5 the IG would have been -- and did, I think, in 2017 conduct a  
6 followup to the 2015 report.

7 So in terms of identifying a systemic problem like the  
8 failure to report criminal history data, the IG identified it,  
9 and the IG did follow up on it.

10 Q. Okay. And similar to how we talked about the 2015 report,  
11 when they're looking at 84 investigations and -- open  
12 investigations and 70 closed investigations during the Devin  
13 Kelley -- at Detachment 225, where are they getting that data  
14 from?

15 A. Well, they would -- they would probably be getting that  
16 data from the Defense Information -- DIBRS, Defense  
17 Information -- and I don't remember -- DIBRS. And I never can  
18 remember that without looking at my notes.

19 But there's -- and also by "we examined 70 closed  
20 investigations for fingerprint cards," I would say here, that  
21 to me would read, they examined the case files of 70 closed  
22 investigations.

23 Q. So would that be something that the Air Force would be  
24 cooperating with the IG, to provide them that data?

25 A. Yes.

1 Q. Okay. Let me show you Joint Exhibit 27, page 1. And I'm  
2 going to zoom in to the highlighted portion of Joint  
3 Exhibit 27.

4 And can you identify for us what you're seeing in terms of  
5 Joint Exhibit 27, page 1.

6 A. Yes. This is the -- this is the response by the Air Force  
7 to the Office of Inspector General's data call, if you will,  
8 the information that the Department of Defense inspector  
9 general requested from the Department of the Air Force.

10 Q. Okay. And so we have some background and we're aware of  
11 what we're looking at, the DoD IG is asking the Air Force to  
12 provide information concerning the Devin Kelley  
13 failure-to-submit report; is that correct?

14 A. Yes, sir.

15 Q. Okay. And is this the type of information DoD IG -- or  
16 inspector generals rely upon in their investigations?

17 A. Yes, sir.

18 Q. Okay.

19 A. One type, yes, sir.

20 Q. Yes. Absolutely.

21 Let me show you page 2 of Joint Exhibit 27 -- sorry,  
22 page 2. And I'll zoom in on page 2.

23 And you can see the date of this report and that it  
24 concerns Mr. Kelley; right?

25 A. Yes, sir.

1 Q. And, here, I want to point out, who is the IG -- the  
2 Air Force IG that is providing and signing off on this report?

3 A. Well, this -- I believe -- this is Colonel Zoerlein,  
4 AFOSI IG investigating officer. So he was part of the -- from  
5 this signature block, I would surmise that he is the IG -- the  
6 Air Force IG's investigating officer within the Air Force  
7 Office of Security Investigations.

8 Q. Okay. So does this go back to how you were discussing  
9 earlier that the Air Force IG wears the AFOSI command hat as  
10 well, that the Air Force IG is in the chain of command for the  
11 Air Force Office of Special Investigations?

12 A. Yes, it does.

13 Q. Okay. Let me go to page 62 of this document. And I'm  
14 just going to zoom in on the first part, which says  
15 "Findings."

16 First of all, you've reviewed this document. Is that  
17 fair?

18 A. Yes. Uh-huh.

19 Q. Is it fair to say that this -- in Joint Exhibit 27, the  
20 Air Force IG reaches conclusions similar to the conclusions  
21 that the DoD IG reached in the Devin Kelley matter?

22 A. As I recall, yes, sir.

23 MR. JACOB: Okay. And if we can zoom back out,  
24 please, to page -- and this is page 62.

25

1 BY MR. JACOB:

2 Q. And I'll represent to you, pages 62 to 69 of Joint  
3 Exhibit 27 are redacted in this litigation.

4 When the DoD IG receives documents and findings such as  
5 this, do they receive a redacted version or an unredacted  
6 version?

7 A. I never recall a data request from the services that  
8 included redacted information like this.

9 Q. Okay. So if the Air Force provides the DoD IG redacted  
10 information, say, on probable cause, does the DoD IG have the  
11 power or authority to request the underlying information from  
12 the service branches?

13 A. Yes, sir.

14 Q. And could you describe that power of authority.

15 A. Well, that is described -- or is in the Inspector General  
16 Act, that the inspector general of any agency has access to  
17 all the records of the agency; in this case, all the records  
18 of the Department of Defense.

19 Q. Okay.

20 A. There is a caveat -- there is a caveat in the IG Act  
21 regarding national security items, that at the discretion of  
22 the secretary of defense, some of that information can be  
23 withheld. But information like this regarding an  
24 investigation, I find it would -- all I can say is, I've never  
25 seen a report from one of the services to the IG that

1 contained redactions like this.

2 Q. So if the Air Force disagreed with any findings or  
3 conclusions that the DoD IG reaches in a draft report, would  
4 that be noted by the DoD IG?

5 A. Yes. If there were -- if there were -- I think in some of  
6 these reports, there were a couple of instances -- the  
7 Air Force, first of all, in the reports that I reviewed,  
8 agreed with the findings and recommendations or, in one case,  
9 used the word "concurred" with the findings and  
10 recommendations.

11 Q. Yeah.

12 A. There were examples -- I'm sure that everyone has read  
13 these reports. And you all see a couple of examples where  
14 the -- one example, in particular, where the Navy disagreed  
15 and explained why they disagreed.

16 So that's typically how it would occur. If there is  
17 disagreement, the report is submitted in draft form to the  
18 subject organization. And they have the opportunity to review  
19 it and come to their own conclusions about whether or not they  
20 agree with the findings, whether there's problems with the  
21 information in the report, or whether they disagree with the  
22 recommendations or the path that the IG is suggesting for  
23 remediation.

24 Q. Okay.

25 A. So, yes, there is an avenue set forth in the -- in the

1 policies and procedures regarding how these reports are  
2 developed for the subject of the report to respond to either  
3 inaccurate information or to disagree with recommendations  
4 made by the agency IG, which, in this case, would be the  
5 DoD IG.

6 Q. Are you aware whether the DoD IG in the Devin Kelley  
7 report that we were discussing previously noted in any fashion  
8 that the Air Force disagreed with any findings, including the  
9 probable cause findings that the DoD IG reached?

10 A. No. As I recall, the Air Force concurred with all the  
11 findings that the IG reached.

12 Q. Okay. Let me show you page 70 of Joint Exhibit 27. And I  
13 want to show you, first, that first finding.

14 It says, "Improper indexing was a widespread problem in  
15 AFOSI at the time of the Devin Kelley investigation."

16 Do you see that?

17 A. Yes, sir.

18 Q. So is it fair to say that the Air Force IG is agreeing  
19 with the DoD IG's conclusion regarding the systemic nature of  
20 this problem?

21 A. Yes, sir. I think the word "widespread" would imply it's  
22 a systemic problem, yes, sir.

23 Q. Okay. Let me zoom out and show you the third finding of  
24 the Air Force IG.

25 Here, the Air Force IG is saying, "Command policy and

1 training appeared adequate, but key Detachment 225 personnel  
2 did not know/understand AFOSI policy with regard to indexing."

3 Is that a similar finding that the -- the DoD IG had?

4 A. Yes, sir, it is.

5 Q. Okay. Let me -- let me take down Joint Exhibit 27 and ask  
6 you a few follow-up questions.

7 Like I said at the beginning of this conversation, instead  
8 of going through each of the findings of the DoD IG, I want to  
9 talk to you about the specific findings and ask you, to a  
10 reasonable degree of certainty, have you reached conclusions  
11 on the reliability of the reports issued by the various IG's  
12 in this case?

13 A. Yes, I have.

14 Q. Were their evidence-collection methods reasonable?

15 A. Yes, sir. They -- everything that I've -- that I  
16 reviewed -- and I principally relied on both reports and then  
17 the depositions that I read and then my understanding of the  
18 standards that were in place for production of such reports.  
19 The Council of the Inspectors General on Integrity and  
20 Efficiency promulgates standards on how these reports are to  
21 be constructed.

22 The CIGIE, if you will, or Council of Inspectors General,  
23 also -- in addition to publishing standards on how the reports  
24 are to be put together, they also have a peer-review process  
25 where the control environment under which the reports were

1 produced is examined and tested. I reviewed the peer-review  
2 report for the Office of Inspector General for the period in  
3 question when these reports were -- the period in which these  
4 reports were prepared.

5 That peer-review report was prepared by the inspector  
6 general of the Department of Health and Human Services, and  
7 the Department of Health and Human Services IG determined that  
8 the DoD IG evaluation process was sufficient, and essentially  
9 passed them. The -- the Health and Human Services IG wrote a  
10 report that indicated that the DoD IG had passed the -- trying  
11 the peer review for that period -- covering that particular  
12 period.

13 Q. Mr. Rymer, did you find, to a reasonable degree of  
14 certainty, that the inspector general, in issuing these  
15 reports that we discussed, had sufficient information to reach  
16 reliable conclusions?

17 A. Yes, sir, I did.

18 Q. To a reasonable degree of certainty, were the conclusions  
19 and the findings in the IG reports, that you reviewed, the  
20 product of reliable methods and principles?

21 A. Yes, sir. Again, based on the -- based on my reading of  
22 the report and my reading of the peer review and my  
23 understanding of the standards, there -- the report complied  
24 with the standards. The standards complied with the -- or the  
25 report complied with the DoD standards, and those DoD



1 standards complied with the CIGIE standards or the  
2 government-wide standards regarding the production of  
3 evaluation reports.

4 Q. And does compliance with the standards mean a reliable end  
5 product?

6 A. Yes, sir. That's the intent. The standards are to -- are  
7 in place to produce a product that can be relied upon, both by  
8 the public and the Congress.

9 MR. JACOB: Your Honor, we pass the witness.

10 THE COURT: Let's go ahead and take a ten-minute  
11 break.

12 *(Recess)*

13 *(Open court)*

14 THE COURT: Thank you. Please be seated.

15 Your cross.

16 CROSS-EXAMINATION

17 BY MR. STERN:

18 Q. Mr. Rymer, good morning again, sir.

19 THE CLERK: Excuse me.

20 BY MR. STERN:

21 Q. Mr. Rymer, good morning, sir.

22 A. Yes, sir. Thank you.

23 Q. Can you hear me okay?

24 A. Yes, sir, I can.

25 Q. Thank you.

1 As you may recall, my name is Paul Stern. I'm an attorney  
2 with the United States Department of Justice.

3 Thank you for your time today.

4 A. Yes, Mr. Stern.

5 Q. Just a few questions, sir.

6 The DoD Office of Inspector General produces somewhere  
7 around 500 reports, investigations, evaluations, audits in any  
8 given year. Is that fair?

9 A. Somewhere around, yes, sir. That's correct.

10 Q. I believe you spoke with Mr. Jacob about a few of those  
11 reports, and so I'd like to discuss them.

12 If we could start at Joint Exhibit 14. I believe this was  
13 the IG report from 1997 that was referred to?

14 A. Yes, sir.

15 Q. Are you aware that the NICS did not start in operation  
16 until November 1998?

17 A. I was a little foggy on the date. But, yes, sir, I agree  
18 with you. Yes, sir.

19 Q. Okay. So this report predates the operation of NICS?

20 A. Yes, sir, it does.

21 Q. In fact, if we look at page 3, when we look at "Evaluation  
22 Objectives," as Mr. Jacob noted, "The primary objective was to  
23 evaluate whether DCIOs are reporting criminal history data to  
24 the FBI in compliance with DoD Criminal Investigations Policy  
25 Memorandum Number 10" or CPM Number 10.

1 Did I read that correctly?

2 A. Yes, sir. And it goes on to say that those requirements,  
3 I think, became effective in March 1987. Yes, sir.

4 Q. That's correct.

5 In fact, if we take a look at page 8 of this report. Take  
6 a look at the bottom portion -- little bit lower.

7 It reads, "United States Code, Title 28, Section 534,  
8 states, the Attorney General shall acquire, collect, classify  
9 and preserve criminal history information, and shall exchange  
10 such records and information with other law enforcement  
11 officials."

12 Did I read that correctly?

13 A. Yes, sir.

14 Q. And then, "The Criminal Information Services Division,  
15 Federal Bureau of Investigation, is designed for complying and  
16 disseminating criminal history record information."

17 Is that correct?

18 A. "Is designated for complying and disseminating," yes, sir.

19 Q. I'm sorry. Thank you. "Designated for complying and  
20 disseminating criminal history record information."

21 So this is saying the obligations stemmed from  
22 28 U.S.C. 534; is that correct?

23 A. Yes, sir.

24 Q. Is that Uniform Code of -- I'm sorry. The Uniform Crime  
25 Reporting Act?

1 A. Yes.

2 Q. And then if we look at the next page, the first part talks  
3 about the CFR as it relates to the Uniform Crime Reporting  
4 Act?

5 A. Yes.

6 Q. And that the agencies are now to submit fingerprints and  
7 final dispositions as a result of the Uniform Crime Reporting  
8 Act; correct?

9 A. Yes.

10 Q. And then to start the next paragraph, "On March 25th,  
11 1987, the deputy inspector general, Department of Defense,  
12 issued Criminal Investigation Policy Memorandum Number 10" or  
13 CPM Number 10, "criminal history data reporting requirements."

14 Did I read that correctly?

15 A. Yes, sir. Yes, sir.

16 Q. So essentially, the requirement to submit fingerprints and  
17 final dispositions derived from the Uniform Crime Reporting  
18 Act; correct?

19 A. Yes.

20 Q. And in order to give guidance to DCIOs, the deputy  
21 inspector general issued CPM Number 10?

22 A. Yes, sir.

23 Q. Let's take a look at page 53. And this is the Air Force's  
24 response to this IG report.

25 It's pretty blurry, so if we can blow up the portion that

1 says, "We concur with your findings on noncompliance." Thank  
2 you.

3 It reads, in part, "We concur with your findings of  
4 noncompliance. The Air Force Office of Special Investigations  
5 (AFOSI) has been working on this issue since its March 1993  
6 evaluation of required documentation in AFOSI investigative  
7 files."

8 Did I read that correctly?

9 A. Yes, sir.

10 Q. So -- so essentially, the Air Force Office of Special --  
11 of Special Investigations was aware of CPM Number 10 and had  
12 actually evaluated itself as early as March 1993?

13 A. Yes, sir.

14 Q. It goes on to read, a little bit lower down, "DoD IG's  
15 recent evaluation report found that high noncompliance levels  
16 occurred -- between CPM 10 lacks adequate procedural guidance.  
17 AFOSI found a similar problem with its implementing regulation  
18 (AFOSI Regulation 124-102). To remedy that problem, HQ AFOSI  
19 issued clarifying guidance on 13 Nov" -- or November -- "1995  
20 requiring AFOSI special agents to coordinate with installation  
21 staff judge advocates" -- or SJA -- "to determine the best  
22 time to fingerprint subjects of a criminal investigation."

23 Did I read that correctly?

24 A. Yes, sir, you did.

25 Q. Okay. So essentially, this is saying AFOSI recognized the

1 problem within CPM Number 10 and took its own steps to remedy  
2 the issue by establishing its own policies. Is that fair?

3 A. Yes, sir.

4 Q. Looking at the next page, it reads, "We concur with the  
5 recommendation that procedure guidance found in DoD IG's  
6 14 November '96 memorandum to the military departments will be  
7 used until a new DoD instruction is developed.

8 "Please note that AFOSI already has a more restrictive  
9 policy implemented" that suggests -- "than that suggested in  
10 the 14 November 1996 memorandum. We do not believe it prudent  
11 at this time to relax or change our requirements, which  
12 presently appear to be working well."

13 Did I read that correctly?

14 A. Yes, sir, you did.

15 Q. So this is saying that AFOSI already recognized the  
16 problem and had devised more restrictive obligations than the  
17 DoD Office of Inspector General had devised; correct?

18 A. Yes, sir. That's what it said. Yes, sir.

19 Q. And they themselves thought it prudent not to relax or  
20 change those more restrictive requirements at the time?

21 A. Yes, sir.

22 Q. In fact, their own policies at the time became the genesis  
23 for DoD Instruction 5505.11, did it not?

24 A. I don't know that, sir.

25 Q. Okay. If we look at page 19.

1       Let me ask you this: Are you aware that the Department of  
2 Defense Office of -- it's fine.

3       Sir, let me ask it this way: Are you aware that the DoD  
4 Office of Inspector General concurred with the fully  
5 responsive comments by the Air Force office of inspector --  
6 Office of Special Investigations?

7 A. Could you show that in the report, sir? It should --

8 Q. I am trying.

9 A. I'm sorry. I understand we're having maybe a technical  
10 issue. But I would -- I would say, I would find it unusual  
11 that the DoD IG would say they concur. And that may be the  
12 word they use, but I think most typically it would be the IG  
13 accepts the response of the Air Force, and no further action  
14 is required.

15       Now, that's typical. I don't remember how it's worded  
16 specifically in this report.

17 Q. Fair enough, sir. And I think you're right.

18       If we look at the first line of the evaluation response,  
19 "We consider the Army and the Air Force comments fully  
20 responsive."

21 A. Yes, sir.

22 Q. So it's fair to say that AFOSI's comments to the DoD OIG  
23 were deemed fully responsive?

24 A. Yes, sir.

25 Q. Fair enough.

1 Let's look at the next report that was referenced, and  
2 that's Joint Exhibit 1.

3 This is the evaluation of Department of Defense compliance  
4 with criminal history data reporting requirements; correct?

5 A. Yes, sir.

6 Q. You already spoke to plaintiffs' counsel about this  
7 report, so we don't have to go to great length.

8 But you were the IG at the time of this report?

9 A. Yes, sir, I was.

10 Q. You weren't directly involved with any of the underlying  
11 investigation that led to this report; correct?

12 A. I'm sorry. I didn't hear the first part of your question.

13 Q. You were not directly involved with any of the  
14 investigation that led to this report; correct?

15 A. That's correct, sir. Yes.

16 Q. You didn't -- you didn't conduct any of the interviews  
17 that led to this report?

18 A. No, sir.

19 Q. You didn't obtain any of the material yourself?

20 A. No, sir.

21 Q. Okay. In fact, if we look at the signature page on this  
22 report. Right there.

23 A. Yes, sir.

24 Q. That is not your signature on this report; correct?

25 A. No, sir. That's Randy Stone. Randolph Stone was a direct



1 subordinate of mine, the deputy inspector general of policy  
2 and oversight.

3 Q. So you might have reviewed a summary of this report, but  
4 not the report itself. Is that fair?

5 A. That's correct, sir.

6 Q. Okay. If we take a look at page 3 of this report. Take a  
7 look at the "Objective." And I believe you already addressed  
8 this with plaintiffs' counsel, but I want to make sure we're  
9 very clear about the issue here.

10 The range of the -- of the sample size, as you suggested  
11 previously, was between June 1, 2010, and October 31st, 2012;  
12 correct?

13 A. Yes, sir. That's correct.

14 Q. And as you already testified, Devin Kelley was not  
15 convicted within that time period?

16 A. He was convicted, I believe, in November 2012, sir.

17 Q. That's correct.

18 So not in this time period; correct?

19 A. That's correct, sir, yes.

20 Q. So as a result, you acknowledge that Kelley's file would  
21 not have been part of the sample study by the IG in this  
22 report?

23 A. Yes, sir. That's correct.

24 Q. Thank you.

25 And looking at the "Findings" section, the first part, it

1 shows an aggregate of noncompliance for Navy, Air Force, and  
2 Marines; correct?

3 A. Yes, sir. That's correct.

4 Q. That's -- the first part being aggregate for fingerprints,  
5 and the second part being an aggregate for a final  
6 disposition?

7 A. Yes.

8 Q. And in their "Recommendations" section, the first part,  
9 "We recommend the secretaries of the Navy and Air Force take  
10 prompt action to submit the missing 304 fingerprints and 334  
11 final disposition reports to the FBI for inclusion into  
12 IAFIS."

13 Do you know what IAFIS is?

14 A. Sir, there would be an abbreviation index at the back of  
15 the report. I would just have to refer to that.

16 Q. But you don't know offhand?

17 A. Not offhand. I don't remember. It's been five years  
18 since I was the IG.

19 Q. Sure.

20 So this report is saying, within the sample size, certain  
21 fingerprints and final dispositions were deemed to be missing;  
22 correct?

23 A. Yes, sir.

24 Q. And as a result, these missing fingerprints and final  
25 dispositions within that sample size -- or the sample period

1 should be submitted?

2 A. That's correct.

3 Q. Correct.

4 And, again, that didn't include Devin Kelley's?

5 A. That's correct.

6 Q. Right.

7 Then the second recommendation, "In addition, we recommend  
8 the secretaries of the Navy and Air Force take prompt action  
9 to ensure fingerprints and final disposition reports for  
10 future arrestees and convicted offenders conform to Department  
11 of Defense Instruction 5505.11, Fingerprint Card and Final  
12 Disposition Report Submission Requirements."

13 Did I read that correctly?

14 A. Yes, sir, you did.

15 Q. And this report was issued February of 2015; correct?

16 A. Yes, sir. That's right.

17 Q. So this recommendation here would have been  
18 forward-looking; isn't that correct?

19 A. Yes, sir, it was.

20 Q. And, again, Devin Kelley was convicted before  
21 February 2015?

22 A. Yes, sir. That's correct.

23 Q. Okay. Now, I want to take a look at AFOSI's -- and by  
24 "AFOSI," do you appreciate that I'm referring to the Air Force  
25 Office of Special Investigations?

1 A. Yes, sir. I understand that.

2 Q. Do you mind if I use "AFOSI" for short?

3 A. No, sir. That'd be fine.

4 Q. I appreciate that.

5 Let's take a look at the recommendation -- I'm sorry --  
6 the response by AFOSI to these recommendations. Let's take a  
7 look at page 31, please. If we could blow up the portion that  
8 says, "AFOSI was tasked with validating 271 service members."  
9 Thank you.

10 If we cut to the bottom portion of this paragraph, it  
11 reads, "However, AFOSI correctly submitted 245 out of 261  
12 fingerprints and 244 out of 261 final dispositions to  
13 IAFIS" -- or IAFIS, IAFIS -- "which reflected a 93.86 percent  
14 success rate for fingerprints and a 93.48 percent success rate  
15 for final dispositions."

16 Did I read that correctly?

17 A. Yes, sir.

18 Q. So, in other words, AFOSI told the inspector general in  
19 2015 that it was complying at rate of 94 percent, roughly, for  
20 compliance with fingerprint cards and final dispositions;  
21 correct?

22 A. No, sir. I don't think that's what that's saying.

23 Q. That is --

24 A. Well, if I could maybe explain. And maybe I'm wrong. But  
25 the -- AFOSI was tasked with validating 271 member service

1 criminal histories. My assumption would be, reading that,  
2 that those 271 were in the -- were part of the 1,100 sample  
3 that was the foundation for this report.

4 So to say that they're in compliance with 93 percent  
5 success rate for final disposition reports, I think that  
6 93 percent success rate would be 93 percent of the 271 service  
7 member criminal histories that were in the original sample.

8 Q. Well, that's exactly right --

9 A. Not overall -- not overall 93 percent success rate.

10 Q. But we're looking at the point in time; correct?

11 In 2015, the Department of Defense Office of Inspector  
12 General conducts an evaluation based on a sample size;  
13 correct?

14 A. Yes, sir. Yes, sir.

15 Q. And based on that sample size, AFOSI determined that they  
16 had a 94 percent compliance rate; correct?

17 A. Could you give me a second, sir, to look at it in just a  
18 little bit more detail.

19 Yes, sir, I believe that's correct.

20 Q. Okay. And the recommendation from this report, being  
21 forward-looking, asks for better compliance with future --  
22 concerning future arrestees; correct?

23 A. Yes, sir.

24 Q. Okay. So to be clear, it did not require a comprehensive  
25 review of all criminal history data being reported, going back

1 to 1997, did it?

2 A. No, sir. It did not.

3 Q. Now, I want to discuss one last report with you, and that  
4 is Joint Exhibit 2, DoD IG 2018-035.

5 If we look at the date on this report, it's December 4,  
6 2017. That's approximately one month after the shooting;  
7 correct?

8 A. Yes, sir. I believe that's correct.

9 Q. If we look at the "Objective" section on page 3, the  
10 objective -- "The objective of our evaluation was to determine  
11 whether all military services law enforcement organizations  
12 (LEOs) had submitted fingerprint cards and final disposition  
13 reports for military service members convicted by  
14 court-martial of qualifying offenses, as required by DoD  
15 instruction."

16 Did I read that correctly?

17 A. Yes, sir.

18 Q. If we look down to the chart on the first page here, the  
19 DoD Office of Inspector General found that AFOSI had a  
20 98 percent compliance rate for fingerprint card submission;  
21 correct?

22 A. Yes, sir. Yes, sir.

23 Q. For fingerprint card. Okay. We'll get to the final  
24 disposition as well, because final disposition, the DoD Office  
25 of Inspector General found that AFOSI, again, had a 98 percent

1 compliance rate?

2 A. Yes, sir.

3 Q. And if we look at the recommendation by the IG in this  
4 report -- and that's on page 4 -- this recommendation reads,  
5 in part, "Immediately perform a comprehensive review of their  
6 criminal investigative databases and files to ensure that all  
7 required fingerprint cards and final disposition reports for  
8 disqualifying offenses at least to 1998 have been submitted to  
9 FBI CJIS in compliance with DoD and FBI requirements."

10 Did I read that correctly?

11 A. Yes, sir.

12 Q. So here, despite AFOSI's 98 percent compliance rate, the  
13 IG, one month after the shooting, recommends that the  
14 secretaries of Army, Navy, and Air Force, as well as the  
15 undersecretary of defense for intelligence and the deputy  
16 chief management officer, that they perform comprehensive  
17 reviews going all the way back to 1998; correct?

18 A. Yes, sir.

19 Q. Okay. But prior to the shooting, such a comprehensive  
20 audit or review was not required or even recommended in either  
21 of the two IG reports already reviewed; isn't that correct?

22 A. Yes, sir.

23 Q. I believe Mr. -- plaintiffs' counsel used the word "aware"  
24 when it comes to the 2015 IG report.

25 Is it your expert opinion that the 1997 IG report and the

1 2015 report made the Air Force aware of its requirements to  
2 submit disqualifying information to CJIS?

3 A. Yes, sir.

4 Q. And that they didn't prioritize that obligation?

5 A. Well, I think if we had a noncompliance rate at that time  
6 in the 30 percent range, there were certainly -- it should  
7 have -- in my view, should have been higher, yes, sir.

8 So whether or not they didn't put the right -- the  
9 emphasis that I would recommend on it, that seemed obvious to  
10 me, sir, yes.

11 Q. So, again, AFOSI had approximately a 94 percent compliance  
12 rate; correct?

13 A. A 94 percent compliance rate? I think that was in the  
14 2017 report.

15 Q. The 2015 report that we already looked at?

16 A. 2015 report, yes.

17 Q. Okay. But in your estimation, it should have been higher;  
18 correct? Is that your testimony today?

19 A. Well, I'm sorry. You've lost me, sir. I'm not -- I'm not  
20 following you. If you could -- if you could restate that.  
21 I'm sorry. I lost track there.

22 Q. AFOSI was found to have a 94 percent compliance rate in  
23 the 2015 report; correct?

24 A. Yes.

25 Q. And it's your testimony -- is it your testimony that AFOSI



1 didn't prioritize the submission of fingerprints and final  
2 dispositions sufficiently?

3 A. Well, I think the evidence shows, sir, that there -- when  
4 you say "didn't," you don't specify period of time. But  
5 certainly in the '97 report, the 2015 report, there were  
6 opportunities for improvement, yes, sir.

7 Q. Opportunities for improvement. Is that fair?

8 A. Yes, sir.

9 Q. Thank you.

10 MR. STERN: No further questions, Your Honor.

11 THE COURT: Any redirect?

12 MR. JACOB: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. JACOB:

15 Q. Mr. Rymer, let me -- can you hear me?

16 A. No, sir, I can't.

17 Q. Can you hear me better now?

18 A. Yes, sir.

19 Q. Okay. Mr. Stern discussed with you how the IG  
20 investigations, in your opinion, didn't recommend fixing or  
21 submitting Devin Kelley's criminal history.

22 Do you remember that conversation?

23 A. Yes, sir. I think Mr. Stern -- or I think I answered  
24 Mr. Stern by saying that the -- that the Devin Kelley  
25 conviction was outside of the sample period. Yes, sir.

1 Q. Right.

2 But did the Air Force have an ongoing obligation to submit  
3 the missing criminal history of Mr. Kelley?

4 A. I think, in order to be in compliance with its own  
5 regulation and the DoD regulation, yes, it did.

6 Q. And Mr. Stern showed you numbers on the percentage of the  
7 AFOSI reporting.

8 Did he show you numbers on the percentage of security  
9 forces reporting?

10 A. I think it was on the chart, but I don't think he  
11 mentioned it, no, sir.

12 Q. Okay. And specifically, I want to look at the raw  
13 numbers. If I can show you Joint Exhibit 433, page 5.

14 And I'll represent to you, this is an exhibit that has  
15 been entered into evidence, and I want to show you the results  
16 of the task force on correcting the problems following the  
17 Sutherland Springs shooting.

18 MR. STERN: Objection, Your Honor. This is beyond  
19 the scope of Mr. Rymer's report. He did not actually  
20 reference the NCIC indexing task force in his report, nor has  
21 plaintiffs' counsel alluded to it during their direct.

22 MR. JACOB: Mr. Stern, however, did show the  
23 percentage numbers, trying to minimize the size of the  
24 problem, when this document shows that they had 73 -- over  
25 7,300 missing fingerprints and final dispositions from the

1 Air Force itself.

2 MR. STERN: To be quite clear, the United States is  
3 not making that argument.

4 What we are saying is, at the time that the IG reports  
5 were produced, the AFOSI -- the Air Force, in general, was  
6 only aware of that which they're being told at the time.  
7 These type of subsequent remedial measures are not only  
8 inappropriate under tort law to consider, but they skew the  
9 entirety of what was being known -- what was being told to the  
10 Air Force at the time those previous IG reports were created.

11 MR. JACOB: Your Honor, this is admitted evidence.

12 MR. STERN: -- bias here.

13 MR. JACOB: This is admitted evidence. Their  
14 objection to subsequent remedial measures is long past.

15 THE COURT: Yeah. So --

16 MR. STERN: That's a legal argument that has never  
17 been waived. Just because --

18 THE COURT: That doesn't go back to the underlying  
19 objection of whether or not he was designated to talk about  
20 the indexing task force. So that is sustained.

21 Next question.

22 MR. JACOB: Yes, Your Honor.

23 BY MR. JACOB:

24 Q. Mr. Rymer, Mr. Stern discussed with you that, in response  
25 to these IG reports, the Air Force provided a response.

1 Do you recall that conversation?

2 A. Yes, sir.

3 Q. And he pointed out, the DoD considers the Air Force  
4 response or the Air Force comments as being responsive; right?

5 A. Yes, sir.

6 Q. And to be clear, the DoD IG did not concur with the  
7 Air Force response.

8 That's not what those documents said; right?

9 A. Well, I think -- I think the word was "accepted." I don't  
10 think they used the word "concur," no, sir.

11 Q. Okay. Is there -- is there a difference between  
12 responding to the recommendation -- being responsive to the  
13 recommendation and actually implementing and responding and  
14 fixing the problems the recommendation highlights?

15 A. Well, most typically, in an evaluation report or an audit  
16 report like this, the IG would accept the concurrence or  
17 acceptance of the -- of the subject of the audit or  
18 evaluation, and then that would also include a remediation  
19 plan that the IG would have the opportunity to review.

20 And then as the remediation plan is executed, the IG  
21 might -- would be taking steps to ensure that the plan is  
22 executed as it was originally presented.

23 But, yes, sir, there is a fair amount of follow-up --  
24 excuse me -- to -- once the report -- once the recommendation  
25 is accepted by the subject of the evaluation, the remediation

1 process begins. That remediation plan is submitted to the IG  
2 and then monitored by the IG. Yes, sir.

3 MR. JACOB: Okay. Pass the witness, Your Honor.

4 THE COURT: Anything else?

5 MR. STERN: Very briefly, Your Honor.

6 RECROSS-EXAMINATION

7 BY MR. STERN:

8 Q. Plaintiffs' counsel just referred to security forces  
9 investigation.

10 In your report, you noted that Devin Kelley was subject to  
11 two law enforcement investigations; one led by 49th Security  
12 Forces at Holloman Air Force Base, the other led by the  
13 Air Force Office of Special Investigations Detachment 225;  
14 correct?

15 A. Yes, sir. That's right.

16 Q. So you recognize that those were two separate, independent  
17 investigations?

18 A. Yes, sir, I would.

19 Q. Are you aware that the security forces investigations  
20 resulted in a letter of reprimand?

21 A. A letter of reprimand to whom, sir? One of the  
22 investigating officials?

23 Q. To Devin Kelley.

24 A. Well, yes, sir. I believe there were a number of  
25 disciplinary actions, but I believe that was one, yes, sir.

1 Q. But I'm referring to the investigation starting  
2 November 17th, 2012, that led to a letter of reprimand that  
3 concluded the security forces investigation of Devin Kelley?

4 A. Yes, sir. I believe that's correct. Yes, sir.

5 Q. Okay. And as a result of that letter of reprimand, the  
6 final disposition of that investigation would have needed to  
7 be submitted to the FBI; correct?

8 A. Would you -- I didn't understand. Did you say "would" or  
9 "would not" have been submitted?

10 Q. "Would have."

11 Let me try this another way. Let's take a look at Joint  
12 Exhibit 8. This is Department of Defense Instruction --

13 MR. JACOB: Your Honor, I apologize. This is beyond  
14 the scope.

15 MR. STERN: Look, to the -- to the extent that  
16 plaintiffs are arguing that the security forces' failures to  
17 submit fingerprints and final dispositions is relevant, as  
18 it's articulated in the IG reports, our argument has always  
19 been that the security force investigation could not be the  
20 proximate cause of plaintiffs' injuries because the security  
21 forces investigation ended in a letter of reprimand.

22 As a result, even if the fingerprints needed to be  
23 submitted at the time -- probable cause, the final  
24 disposition, i.e., the letter of reprimand, would also have  
25 needed to be submitted to close the loop on that

1 investigation.

2 Because the letter of reprimand was not a prohibiter under  
3 the Gun Control Act, Kelley would not have been prohibited,  
4 based on that investigation. And as a result, it could not be  
5 the proximate cause of plaintiffs' injuries.

6 MR. JACOB: Your Honor -- and they may have another  
7 witness to talk about that. But this testimony with this  
8 witness is beyond the scope of redirect examination.

9 MR. STERN: Then, I would ask to strike the comments  
10 regarding the security forces' failure to submit fingerprints  
11 and final disposition, as articulated in the DoD IG reports.

12 THE COURT: The objection's overruled.

13 You can continue.

14 MR. STERN: Thank you.

15 BY MR. STERN:

16 Q. If we look at Enclosure 3 in this instruction.

17 Sir, looking at this instruction, it reads, in part,  
18 "Within 15 calendar days after final disposition of military  
19 judicial or nonjudicial proceedings or the approval of a  
20 request for discharge, retirement, or resignation in lieu of  
21 court-martial, disposition information shall be reported by  
22 the DCIO or other DoD law enforcement organizations under the  
23 R-84 or an electronic data transfer equivalent if it has not  
24 already been reported on an FD-249."

25 Page 10. Mr. Rymer, I apologize. I believe it's

1 Enclosure 4. So we're taking a look at this.

2 It states that, "Within 15 calendar days after final  
3 disposition of military judicial or nonjudicial proceedings or  
4 the approval of a request for discharge, retirement, or  
5 resignation in lieu of court-martial, disposition information  
6 shall be reported by the DCIO or other DoD law enforcement  
7 organization on the R-84 or an electronic data transfer  
8 equivalent, if it has not already been reported on an FD-249."

9 Did I read that correctly?

10 A. Yes, sir.

11 Q. So if a security forces investigation ended in a letter of  
12 reprimand -- and you acknowledge that a letter of reprimand is  
13 a nonjudicial proceeding; correct?

14 A. Yes, sir.

15 Q. Then they -- then security forces would have needed to  
16 submit an R-84 to CJIS within 15 days after that letter of  
17 reprimand; correct?

18 A. According to this, yes, sir.

19 Q. Thank you.

20 MR. STERN: No further questions, Your Honor.

21 THE COURT: Anything else?

22 MR. JACOB: No, Your Honor.

23 May this witness be excused?

24 THE COURT: Any further need for this witness?

25 MR. STERN: No need, Your Honor.



1 THE COURT: Thank you, Mr. Rymer. You're excused.

2 THE WITNESS: Thank you, sir.

3 THE COURT: And your next witness.

4 MR. JACOB: Yes, Your Honor. If we may have five  
5 minutes to get him connected and test.

6 THE COURT: And that'll be Daniel Webster?

7 MR. JACOB: Yes, sir.

8 THE COURT: Let's go ahead and take a five-minute  
9 break.

10 *(Recess)*

11 *(Open court)*

12 THE COURT: Thank you. Please be seated.

13 MR. JACOB: Your Honor, plaintiffs call Daniel  
14 Webster.

15 THE CLERK: Mr. Webster, if you'll raise your right  
16 hand, please.

17 Mr. Webster, if you'll raise your right hand.

18 MR. JACOB: Mr. Webster, can you hear us?

19 THE WITNESS: Yeah, I can hear you.

20 THE CLERK: Mr. Webster, will you raise your right  
21 hand, please, so I can swear you in.

22 *(The oath was administered)*

23

24

25

1 DANIEL WEBSTER, PLAINTIFFS' WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MR. JACOB:

4 Q. Sir, would you introduce yourself to the Court, please.

5 A. Sure. My name's Daniel Webster.

6 Q. And who is your employer?

7 A. Johns Hopkins University.

8 Q. And what do you do for a living?

9 A. I'm a professor in the Department of Health Policy in the  
10 School of Public Health. I teach graduate courses on violence  
11 prevention, research methods. And I conduct research. Most  
12 of that research is focused on the problem of gun violence and  
13 what to do about it.

14 Q. Okay. And I want to go into that background in a little  
15 bit of detail.

16 But, first, could you tell us, do you have an official  
17 title at Johns Hopkins?

18 A. Sure. My official title is Bloomberg professor of  
19 American health in violence prevention, and I'm a tenured  
20 professor.

21 Q. And is Johns Hopkins School of Public Health a ranked  
22 school of public health?

23 A. Yes, it is. We're ranked number one.

24 Q. And let me show you your CV, Joint Exhibit 316 [sic], and  
25 talk -- take you through that, if you wouldn't mind.

1 A. Okay. Sure.

2 Q. First of all, do you see Joint Exhibit 316 on your screen?

3 A. Yes.

4 Q. And is Joint Exhibit 316 a copy of your CV?

5 A. Yes, it is.

6 Q. You've reviewed this CD. Is that -- CV. Is that fair?

7 A. Sure. Yes.

8 Q. And is Joint Exhibit 613 accurately fleshing out your  
9 experience, your credentials, education, training?

10 A. Yes, it is.

11 Q. Okay. First, could you describe for us briefly -- and  
12 I'll zoom in on your education and training -- your  
13 educational background.

14 A. Sure. I have a bachelor's degree in psychology from  
15 University of Northern Colorado. I have a master's in public  
16 health degree from University of Michigan, completed in 1985.  
17 And then I got my doctorate of science degree from the same  
18 department I now teach in, at the Johns Hopkins School of  
19 Public Health in 1991.

20 Q. Okay. And I apologize if this question sounds very basic.

21 But could you tell us what public health is, the study of  
22 public health?

23 A. Okay. That's actually sort of challenging because public  
24 health is pretty massive.

25 But, generally, the field of public health, of course, is

1 interested in not only the health and safety of individuals,  
2 but of populations. So the field is very vast. It's a very  
3 multi-disciplined field.

4 The way I characterize public health is, it's a field  
5 focused on solving problems relevant to our health and safety.  
6 And, of course, that's very broad, but that's truly what  
7 public health is. And my focus has been on policies -- health  
8 policies that impact the health of populations.

9 Q. Okay. And today, in your career, do you have a specific  
10 focus inside of public health, an area that you specialize in?

11 A. Yes. For the past thirty years, my focus has been on the  
12 prevention of gun violence, including suicide, unintentional  
13 shootings as well. I also have subarea of focus in issues  
14 relevant to drug and alcohol policy as well.

15 Q. Okay. And is public health a field of epidemiology?

16 A. Epidemiology is a foundation upon which most of public  
17 health is based. It is -- it is where we begin to understand  
18 the nature of the problem, who's affected by it, the scope of  
19 it, and understand causal factors related to the health  
20 conditions that we're studying and trying to impact.

21 Q. Okay. And so what I'd like to do for the Court is show  
22 the Court how you got from your various degrees, your  
23 master's, doctor's, and bachelor's, to your current role.

24 Could you tell the Court where you started your career.

25 A. Sure. After I got my bachelor's degree, shortly

1 thereafter, I became a social worker for the Department of  
2 Social Services in the Commonwealth of Kentucky where my role  
3 was to mostly investigate child abuse and neglect.

4 I also was involved in supervision of some juveniles who  
5 had gotten into trouble. And occasionally, I also dealt with  
6 broader family violence issues in my role.

7 Q. And was that a fairly hands-on role?

8 A. Very directly hands-on, yes.

9 Q. Okay.

10 A. I went into homes in the county that I worked in, worked  
11 directly with the -- with the families and other agencies that  
12 were relevant to the situation going on, whether it was  
13 schools or hospitals or the court systems.

14 Q. Okay. And after your role as a social worker, following  
15 your degree in -- where did you go?

16 A. I went to University of Michigan to get my master's of  
17 public health. It was there that I began to focus more on  
18 injury and violence prevention and -- yeah.

19 Q. Do you -- let me show you page 22 of your CV, Joint  
20 Exhibit 316 -- or 613. I apologize.

21 A. Okay.

22 Q. Since your educational -- since you received your master's  
23 and then your doctorate of science in these fields, have you  
24 taught these areas?

25 A. Yeah. I actually developed the first course in an

1 accredited school of public health on violence prevention. So  
2 I was very much involved in the foundation of understanding  
3 violence through a public health lens as a public health  
4 problem. I've also taught courses in research methodology.

5 What's not on this is a brand-new course I'm teaching now,  
6 a problem-solving course focused on gun violence.

7 Q. And could you describe what you mean by "a problem-solving  
8 course" on gun violence?

9 A. Sure. So this is a course that takes graduate students  
10 through the entire process, from gathering data, to understand  
11 the nature and scope of the problem, who is impacted,  
12 developing conceptual models of that problem and logic models  
13 for various strategies to address it, to formally reviewing  
14 and synthesizing evidence on intervention models that --  
15 excuse me -- that impact the nature of gun violence that  
16 you're focused on and even carries through into understanding  
17 key issues relevant to implementation.

18 This covers not only the passage and enforcement of laws,  
19 but it also covers programmatic interventions in communities.

20 Q. Okay. And you said over the course of your 30 years that  
21 you've been working on this particular area, the touching on  
22 gun violence prevention and policy. Over that time has  
23 your -- how do you divide your time between teaching versus  
24 research or other activities?

25 A. Yeah. I would say that roughly 75 percent of my time is

1 focused on research, and the other 25 percent is focused on  
2 teaching, advising, mentoring graduate students.

3 Q. Over the course of your career, how many students have you  
4 taught, advised, mentored in these areas?

5 A. Yeah, that's hard. So as far as doctoral students, I've  
6 probably advised and have close working relationships with  
7 about a dozen such students. I've trained many of the top --  
8 or leading researchers in this field.

9 I also have mentored roughly 50 master's students, many of  
10 whom focused in some, shape, or form on violence prevention  
11 and often very specifically on gun violence. Then, of course,  
12 I taught, I don't know how many people over those years. A  
13 lot.

14 Q. Do you testify before legislatures on these issues?

15 A. Yes. Occasionally, I do testify at state legislatures and  
16 in Congress.

17 Q. Are you invited to testify?

18 A. Sometimes, yes. That's more commonly the scenario.

19 I'm pretty busy. So the nature of my research -- there is  
20 often legislative things going on all the time. And I, of  
21 course, don't have time to testify on all of those cases. But  
22 occasionally, I'm asked, based upon the nature of the bill and  
23 the research that I've done on the topic.

24 Q. Are you invited to provide presentations or educational  
25 materials outside of your work with Johns Hopkins concerning

1 the topics of gun violence prevention and all of the issues in  
2 that area?

3 A. Yes, quite frequently. I've given many invited talks and  
4 lectures at universities across the country. More than I  
5 could count.

6 Q. Are we talking, you know, dozens or hundreds? What's --

7 A. Oh, so in a typical year, I'm probably giving four,  
8 five -- about four lectures at other universities or -- and  
9 then in addition to that, there are other meetings and  
10 convenings of other professional organizations; like the  
11 National Academy of Sciences, for example. So --

12 Q. Yeah. Can you give me an example of a few universities  
13 that you have lectured at or have invited you to lecture?

14 A. Oh, sure. So I've given lectures at Harvard, Penn,  
15 Columbia -- let's see -- Oregon Health Sciences, Ohio State,  
16 Michigan.

17 Q. How about the University of Texas?

18 A. University of Texas? I'm trying to think if I've done  
19 them. I'm not sure if I have or not.

20 Q. Okay. Let me turn your attention to your -- the  
21 "Publications" area of your CV. And I want to show you  
22 page 8 --

23 A. Sure.

24 Q. -- of Joint Exhibit 613.

25 A. Uh-huh.



1 Q. And, first of all, that's just the beginning portion of  
2 your publications. Is that fair to say?

3 A. Yeah. That's the most recent ones. And this is what I  
4 believe I submitted in March or something of --

5 Q. Is --

6 A. -- the prior year.

7 Q. Sure.

8 Can you tell the Court how many peer-reviewed publications  
9 you have to your name?

10 A. I think I have approximately 140.

11 Q. Do you have publications in other journals beyond just  
12 peer-reviewed publications?

13 A. Yeah, occasionally. Most of my work is peer-reviewed  
14 publications. Occasionally, I will write op-eds in, you know,  
15 *Washington Post* and other news outlets of that type.

16 And, occasionally, I'm also invited by journals to write  
17 special commentaries on the issue of gun violence and its  
18 prevention.

19 Q. Have you published -- and if we can zoom back out to your  
20 full CV.

21 Have you published in the areas of gun violence and gun  
22 violence prevention?

23 A. Yes. I would estimate -- I haven't broken this down, but  
24 I would estimate probably three-quarters, if not more, of my  
25 publications are on the topic of gun violence and its

1 prevention.

2 Q. What about domestic violence? Have you published or  
3 studied that area?

4 A. Yes, I have. I actually designed and was the second  
5 author of a very important study on risk and protective  
6 factors for intimate partner homicide. I believe it actually  
7 might be the most commonly cited study in the field of  
8 domestic violence research, as important ramifications for  
9 understanding how we address this important problem of  
10 domestic homicide.

11 Q. And when you say "most commonly cited study," how many  
12 citations are we talking about?

13 A. I don't know off the top of my head. There was an article  
14 that came out within the past year that sort of summarized  
15 some of these things.

16 Some researchers track these things almost obsessively. I  
17 don't. I know it's a commonly cited thing. But in a  
18 publication that came out recently, I saw that it was -- it  
19 was the number one.

20 Q. Can you tell the Court why you study domestic violence in  
21 the context of gun violence prevention?

22 A. Yeah. I guess the answer to that question is twofold.

23 One is it's just an important form of gun violence. It  
24 also is a type of gun violence that I think perhaps we have  
25 more opportunities to intervene with policy and other

1 interventions.

2 The other thing I would say, the important reason to  
3 understand and study connections between domestic violence and  
4 firearms, in particular, is that many people who -- the people  
5 who commit the most severe forms of domestic violence in  
6 intimate partner violence, including those involving firearms,  
7 are rarely only violent within that context. They more  
8 commonly are violent outside of that intimate partner or  
9 family context.

10 And so understanding and zeroing in on such individuals,  
11 you have a potential to address not only the problem of  
12 domestic homicide but also other acts of violence that  
13 individuals with histories of domestic violence might commit.

14 Q. Okay. And we'll definitely get into that later in our  
15 conversation.

16 But first, with regard to the research that you've  
17 published over the course of your 30 years, how is that  
18 research typically funded?

19 A. Most of my research has been funded by private  
20 foundations. I've also received grants from the Centers for  
21 Disease Control and Prevention to study strategies to  
22 prevent -- to prevent youth homicide and youth violence. I've  
23 had three different CDC grants covering five years --  
24 five-year grants, for example.

25 I've had some NIJ grant funding; although, not

1 particularly recently. And some of my research has been  
2 funded sort of in partnerships with law enforcement agencies  
3 through U.S. DOJ grant funding from the Bureau of Justice  
4 Assistance.

5 Q. Okay. Let me take down Joint Exhibit 613, so we can talk  
6 more directly with you.

7 Are you familiar with the concept of research as applied  
8 to individuals versus theoretical research?

9 A. Sure. Well, I'm not sure what you mean by "theoretical  
10 research." So you're going to have to be more specific about  
11 that.

12 Q. Yeah. What I want to talk about is the applied aspect of  
13 your -- of research.

14 Is the research studies that you perform applied to  
15 specific individuals or more broad -- broader than that?

16 A. Well, I've conducted two kinds of research. Some of the  
17 research that I've done of the nature that I was describing  
18 earlier where we're understanding risk and protective factors  
19 for lethal outcomes in the context of domestic violence, those  
20 are individual-level studies that were interested in all the  
21 individual factors going on so that we can predict outcomes  
22 and ideally try to intervene before the bad outcomes occur.

23 But a lot of my research focuses at the population level.  
24 So the units of analysis that we're studying could be  
25 counties, cities, or states and what policies they've applied

1 to address problems relevant to violence and, particularly,  
2 gun violence.

3 Q. Have you studied the concept of risk among individuals in  
4 that type of population and specifically domestic violence and  
5 gun violence individuals?

6 A. Yes, absolutely. The foundational study that I was  
7 referring to earlier with the -- it was 11 major cities,  
8 geographically diverse across the United States, focused --  
9 looking at -- actually, there were three categories.

10 There were intimate partner homicides, another category  
11 that were either near -- sometimes we call them near homicides  
12 or attempted homicides. These were very serious assaults that  
13 people were lucky to survive. And then the other category  
14 were the nonfatal cases where we identified those individuals  
15 through random-digit-dial surveys in communities to identify  
16 women who were either in physically abusive relationships or  
17 recently out of them.

18 That study was designed very specifically to understand  
19 these individual risks, and it was the foundation upon which  
20 two different tools that are commonly used across the  
21 United States, and I think actually beyond, one called the  
22 danger assessment tool. I believe it's 22 items designed to  
23 predict how dangerous someone is, particularly with lethal  
24 outcomes. And then a somewhat shorter tool used in the field  
25 by -- often by law enforcement and -- or occasionally in

1 clinical contexts, shorter survey designed to do the same kind  
2 of thing of sort of sort and identify those at the highest  
3 risk for committing lethal acts of violence.

4 Q. And could you explain to the Court your role in creating  
5 these tools, such as the danger assessment tool and the second  
6 high-risk individual tool?

7 A. Sure. So the -- it was based upon, you know, a design of  
8 an initial study, a design that in epidemiology we refer to as  
9 a case control study.

10 The cases are the outcome of interest in this case,  
11 intimate partner homicides. And the controls were people in  
12 very similar circumstances who had, you know, not been killed  
13 in their relationship, that also had physical violence.

14 So part of it is the design, just -- by the way, I mean,  
15 in an ideal world, if you had unlimited time and money --  
16 which we never do, of course -- you would just study entire  
17 populations and sort these risk factors out. But, of course,  
18 you need to be more efficient. And a common way that  
19 epidemiologists do that is through a case control design.

20 We then -- in terms of assessing risk for something like  
21 the danger assessment or lethality assessment tool, it's based  
22 upon a set of weights, which set of factors are most  
23 predictive of elevated risk, in this case, for the outcome of  
24 domestic homicides.

25 So the factors, such as the abuser's possession of a

1 weapon, which we found to elevate risk more than any other  
2 independent risk factor -- so those -- the weights of how much  
3 these conditions, in a sense, either increase or decrease risk  
4 are factored in the overall danger score or lethality score.

5 Q. And what kind of organizations or institutions use your --  
6 the tools that you design -- the danger assessment tool, the  
7 high-risk individual assessment tool -- in their day-to-day  
8 lives?

9 A. So I want to give credit where credit is due. My  
10 colleague, Jacquelyn Campbell, is the primary author of the  
11 danger assessment and developed a lot of the underlying  
12 theory. And then we worked together on some of the research.  
13 So I just want to make sure I'm giving the appropriate credit.

14 But in terms -- to answer your question, these are tools  
15 that are used in law enforcement agencies, probably in every  
16 single state by now. I know, not that long ago, it was  
17 40-some states were using the tool.

18 It's a tool that's used in programs that serve victims of  
19 domestic violence for emergency shelter and other types of  
20 services. It's used by legal clinics that serve that same  
21 population, and it's also used by health professionals who  
22 encounter and treat and try to provide assistance to patients  
23 who come in with that type of history of domestic violence.

24 Q. And is the tools that you and your colleague, Ms. -- or  
25 Dr. Campbell, developed used on an individual-by-individual

1 basis, or is it a broader tool?

2 A. Individual basis, yeah. I mean, you cannot calculate with  
3 great precision, of course, it across whole populations.

4 So the tool is designed, based upon the underlying study,  
5 to look at the individual set of factors going on for that --  
6 in that individual's case.

7 Q. And have subsequent studies borne out the reliability of  
8 these danger assessment tools that you and Dr. Campbell  
9 designed?

10 A. Well, there are other studies that look at risk factors  
11 for lethal outcomes. They don't always cover every single  
12 thing that's in the danger assessment. But there's  
13 independent research support for the key factors that are  
14 included there, such as history of strangulation -- or  
15 sometimes the victims use the word "choking"; "he choked  
16 me" -- threats with a weapon and the presence -- the abuser's  
17 ownership of a weapon.

18 A lot of those factors have also been studied and  
19 corroborated, I guess, in prior -- in other studies.

20 Q. Okay.

21 MR. JACOB: Your Honor, at this time, we offer  
22 Dr. Webster in epidemiology, gun violence policy and  
23 prevention and public health policy.

24 MS. KRIEGER: No objection.

25 THE COURT: Y'all need to be more specific in



1 objections. Is there --

2 MS. KRIEGER: I said, "No objection."

3 THE COURT: No objection. Okay. Thank you. All I  
4 heard was "objection."

5 MS. KRIEGER: I apologize. I apologize, sir.

6 No objection.

7 THE COURT: The doctor's recognized as an expert as  
8 such.

9 BY MR. JACOB:

10 Q. Dr. Webster, I want to shift gears a little bit and talk  
11 about this particular case. Could you tell the Court what you  
12 were asked to do in this case.

13 A. Yeah. So I was asked to look at the set of facts and  
14 provide my assessment of whether it was foreseeable that  
15 Mr. Kelley, Devin Kelley, could commit serious acts of  
16 violence, to examine what happened or didn't happen with  
17 respect to his prior history, criminal history, and the  
18 records involved, and draw upon both my own research but other  
19 research to provide an assessment whether this is -- this was  
20 basically something that could have been prevented.

21 Q. And we'll get to that in detail, but I know -- I  
22 understand that you've reviewed thousands, probably, pages of  
23 documents in this case.

24 Would you mind giving the Court a brief overview of the  
25 types of information that you reviewed in this case.

1 A. Sure. So I reviewed files from the investigations of  
2 domestic violence, the interviews of Air Force personnel who  
3 were Devin Patrick's supervisors. I reviewed interview  
4 documentation from interviews with Devin Kelley's father and  
5 family members connected to Tessa and Danielle, his first and  
6 second wife.

7 I'm trying to remember what else I reviewed now.

8 Q. Well, if I can ask you about some categories.

9 A. Yeah.

10 Q. First of all, I assume in your day-to-day practice, you  
11 review studies that are directly applicable to these types of  
12 issues that we're about to discuss?

13 A. Oh, yes.

14 Q. Did you review mental health records of Devin Kelley?

15 A. Yes, I did.

16 Q. What about post-shooting investigations in this case?

17 And when I refer to "shooting," I mean the Sutherland  
18 Springs shooting in November of 2017.

19 A. Yeah. So what I particularly remember and keyed in on was  
20 the assessment when he was involuntarily hospitalized due to  
21 some mental breakdowns and an assessment of depression,  
22 suicidality, antisocial behavior disorder. That -- those  
23 were, I think, particularly key and important, as well as a  
24 very direct assessment of his danger to others at that time.

25 Q. And what about depositions in this case?

1 Did you review depositions of the various witnesses  
2 involved in this case that were taken?

3 A. Yes.

4 Q. And trial testimony?

5 We've had the testimony of Danielle Smith; Michelle  
6 Shields; and Mr. and Mrs. Kelley, the parents of Devin Kelley.

7 Did you review that testimony?

8 A. Yes.

9 Q. And more broadly speaking, was this case -- your  
10 involvement in this case, the first time you had heard about  
11 the Sutherland Springs shooting?

12 A. Oh, no. Of course, you know, I study gun violence. This  
13 was a major event. So I was -- I definitely followed what was  
14 in the news as information came out about it.

15 Q. Okay. And could you briefly describe to the Court when  
16 the first time -- and the circumstances surrounding the first  
17 time you heard about this particular case?

18 A. Yeah. So, you know, I remember, as more information came  
19 out about, you know, why -- you know, why would someone come  
20 to a church and commit this act of violence?

21 Most commonly, in any shooting, but particularly in mass  
22 shootings, this is not random. Targets are not random. There  
23 are, of course, exceptions, but usually they're motivated.  
24 They're motivated by a sense of grievance and anger towards  
25 someone or some set of individuals.

1        So as it became, you know, more known about his spouse's  
2        family's connections to that church and Danielle Kelley's own  
3        connections to that church as being a very important place for  
4        her, in my mind, I understood this as, again, something that  
5        was very much a family domestic violence-oriented and  
6        motivated attack.

7        It is something -- again, there's too many cases to count  
8        in which very deadly shootings are motivated by these -- you  
9        know, intense emotions and grievance -- feelings of grievance,  
10       to intimate partners, in particular. So that is what struck  
11       me about this case in particular, and just also discussing  
12       this among my colleagues, who, you know, share a similar  
13       interest in understanding gun violence, what motivates it.

14       Q. So when you learned about this case, did you learn about  
15       it through your job as a gun violence prevention researcher  
16       and professor at Johns Hopkins?

17       A. Well, I didn't undertake a separate study of this  
18       particular incident. I just -- frankly, I'm often asked to  
19       comment on such tragedies in the news media. So I want to  
20       become as knowledgeable as I can about the set of facts at  
21       play. So --

22       Q. And since that time, have you found out much more  
23       particular details about this case than what you learned  
24       initially?

25       A. Oh, yeah. Yeah, a lot more. I did not really know

1 Mr. Kelley's -- Devin Kelley's full history. Of course, I did  
2 know, because it was a major item -- newsworthy item and also  
3 relevant to gun policy, that in his history were these  
4 convictions for felony domestic violence that should have  
5 prohibited him from purchasing the rifle that he used in this  
6 shooting.

7 Q. Okay. And we'll get to that.

8 But before we do, I want to ask you, is your approach to  
9 this case and the conclusions that you reached in this case  
10 the same approach you take in your day-to-day professional  
11 career as a gun violence prevention professor and researcher  
12 and scientist?

13 A. So yes and no. Yes, in that I am looking at data and  
14 research and trying to draw what I think are the best  
15 inferences, most solid inferences from that available  
16 research. Usually, my job as a policy researcher, I am not  
17 looking at every individual case in the same sort of detailed  
18 way as I am now, because usually the level of detail is not,  
19 frankly, there to do that.

20 So, you know, more commonly, my research that I do, I am  
21 not as in the weeds of all the set of factors at play in going  
22 about my research. But, again, this was a different case  
23 and --

24 Q. So in this case, would it be fair to say you have more  
25 information than you typically have access to in reaching your

1 conclusions?

2 A. Far more, yes.

3 Q. And did you reach your conclusions with the same rigor  
4 that you would use in your professional career?

5 A. Yes.

6 Q. Are all of the opinions that you're going to be providing  
7 this Court reached to a reasonable degree of certainty?

8 A. What do you mean by "reasonable degree of certainty"?

9 Q. Sure. You know, this is a civil suit, and the opinions  
10 you offer have to be to a -- the preponderance of the evidence  
11 standard, more likely than not.

12 Are you reaching those -- the opinions that you've reached  
13 in this case using that standard?

14 A. Yes.

15 Q. Okay. So the first topic that I'd like to discuss with  
16 you is acquisition of firearms by people like Devin Kelley.

17 Is that -- is that a subject that you've studied  
18 extensively?

19 A. Yes.

20 Q. And have you published in that area?

21 A. Yes.

22 Q. And can you describe some of the publications.

23 A. Yeah. Maybe the most important and direct one is, again,  
24 the study I've referenced a few times now, the risk factors  
25 for intimate partner femicide study that I was the second

1 author on, with Dr. Jacquelyn Campbell as the lead, published  
2 in *American Journal of Public Health*.

3 There, we studied hundreds of women who were murdered by  
4 their either current or former intimate partners, and went and  
5 collected data on nonfatal cases in the same cities where  
6 these deaths occurred, where these homicides occurred. And  
7 the study was a federally-funded study, incredibly  
8 comprehensive.

9 It's hard to imagine what risk factor we didn't examine in  
10 our study. So it was an incredibly comprehensive set of  
11 studies -- or, well, principal study there.

12 As I mentioned, there were two key outcomes we were  
13 looking at. We were looking at lethal cases and near-lethal  
14 cases. So we also published on the near-lethal cases as well.

15 Q. Okay. And I promise we will get to that study.

16 MR. JACOB: But before we do, Your Honor, it's about  
17 noon. I don't know if this is an appropriate time, since  
18 we've just finished, sort of, the methodology and we're about  
19 to go into the substance, to take a lunch break.

20 I'll defer to the Court and counsel on that.

21 THE COURT: This looks like a good break.

22 I'm just kind of curious, are we going to have available  
23 time at the end of the day, or is this witness going to take  
24 the whole day?

25 MR. JACOB: In terms -- this is the only witness left

1 for today.

2 THE COURT: Right. Yeah. That's why I'm asking.  
3 I'm trying to figure out -- can I do something at 4:00 or not,  
4 is what I'm trying to figure out. So what's your estimation?

5 MR. JACOB: If we can take a short lunch --

6 THE COURT: Yeah. If I can squeeze another meeting  
7 in, that would be great. But if not, I understand. And so  
8 I'm just trying to figure out schedule.

9 Let's take 30 minutes. We'll be back about 12:30,  
10 12:35-ish.

11 *(Recess)*

12 *(Change in reporter)*

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1 (Change in reporter.)

2 MR. JACOB: Proceed, Your Honor?

3 THE COURT: Yes.

4 DIRECT EXAMINATION CONT'D.

5 BY MR. JACOB:

6 Q. All right. Dr. Webster, can you hear us?

7 A. Yes.

8 Q. Okay. Now I want to talk to you a little bit about the  
9 acquisition of firearms by people like Devin Kelley. And one  
10 of the issues that we're dealing with in this case is if the  
11 Air Force had exercised reasonable care in collecting and  
12 submitting Mr. Kelley's criminal history to the FBI.

13 What I want to know about that particular subject is, is  
14 there evidence in your field that individuals like Kelley  
15 would be discouraged or deterred from acquiring firearms,  
16 altogether, if they had been denied firearms by a FFL, a  
17 federal firearms licensee?

18 A. Yes. There are -- there is research evidence to support  
19 that. There are at least three that come to mind that are --  
20 what I would say are individual-focused as opposed to broad  
21 policy-focused, population level.

22 So there's one study. The lead author is Mona Wright  
23 along with Drs. Garen Wintemute and Frederick Rivara, that  
24 they studied individuals with a history of prior felony  
25 arrests; some of whom were convicted and denied when they

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1 attempted to purchase firearms, and another group who did not  
2 have a disqualifying conviction and, therefore, were allowed  
3 to go forward and purchase.

4 Q. Okay.

5 A. In that study, they did find that those -- those who were  
6 allowed to purchase after controlling for history -- prior  
7 criminal history had an elevated risk for committing both gun  
8 and violent offenses.

9 Q. Okay. And I want to --

10 A. And I talked about --

11 Q. Yeah, go ahead.

12 A. Sorry.

13 Q. Yeah, I want to go through those studies. You said the  
14 first study was Wright.

15 What were the other two studies that you mentioned?

16 A. Sure. The other two; one, the first author is, again,  
17 Dr. Garen Wintemute. This focuses on disqualifying violent  
18 misdemeanants. The policy changed in 1990 or '91 -- I can't  
19 remember exactly -- in California.

20 Anyway Dr. Wintemute had access to data for people -- from  
21 people who were applying to purchase handguns but, before and  
22 after that policy change, provided an opportunity to contrast  
23 people with, basically, similar prior histories in one portion  
24 of time that were allowed to -- they were not denied because  
25 they're not disqualified yet and, subsequently, those who were

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1 denied.

2 And then finally, there is a study by — led by  
3 Dr. Jeffrey Swanson from Duke University. Here, the study  
4 looked at what happened when the State of Connecticut had a  
5 policy change and started to submit its records for  
6 disqualifying mental health-related events in the State of  
7 Connecticut.

8 And what Dr. Swanson and his colleagues found was that  
9 when that policy change occurred, by providing those criminal  
10 history records made available for background check for  
11 firearm purchases, the rate of violent crime among those for  
12 whom this was relevant, meaning those who had mental health  
13 disqualifiers, their rate of violent offending was basically  
14 cut in half as a result of that policy change.

15 So those are the three that I think are probably most on  
16 point.

17 Q. Dr. Webster, what I'd like to do with you, then, is first  
18 I want to give the Court a preview of that opinion that you  
19 hold concerning whether Devin Kelley would have been deterred  
20 or discouraged from acquiring firearms altogether.

21 A. Um-hum.

22 Q. And then, second, go into the studies and any other  
23 information you used to reach that conclusion.

24 A. Sure.

25 Q. Do you think that would be helpful in understanding your

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1 opinions and the underlying science?

2 A. Yes.

3 Q. Okay. So, first, have you reached a conclusion as to  
4 whether Devin Kelley would be discouraged or deterred from  
5 acquiring firearms altogether if he had been denied at a FFL?

6 A. Yes. I think he would have been discouraged. You never  
7 know with 100 percent certainty whether he would have gone on.

8 But the available facts, both from those studies that I  
9 mentioned and very specific facts relevant to Devin Kelley,  
10 both lead me to believe that he would have been discouraged  
11 from accessing the firearms that he used to commit mass murder  
12 in Sutherland Springs.

13 Q. Right. And that actually goes to -- my next question is  
14 did you reach that opinion to a reasonable degree of  
15 certainty, that more-likely-than-not standard that we  
16 discussed?

17 A. Yes. Again, I want to stress that when you're trying to  
18 predict who is going to commit mass murder, which is a -- not  
19 a frequent event, that's hard to do. But what I'm basing my  
20 opinion on is that he would have been deterred from serious  
21 acts of violence with a gun.

22 The facts available, obviously, are what they are, as they  
23 played out, because he did follow through with this particular  
24 act.

25 I simply wanted to note that, just because predicting any

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1 one single event, particularly an event of this magnitude,  
2 would be very difficult. But it was very foreseeable and  
3 predictable that Devin Kelley would commit serious acts of  
4 violence, and that those acts would be almost certainly lethal  
5 if he had access to a firearm.

6 I also base that opinion based upon Mr. Kelley's history  
7 with firearms. He clearly had a preference for going to — to  
8 purchase his weapons — his firearms from federally licensed  
9 dealers. That's actually a very logical conclusion or  
10 preference.

11 Q. Um-hum.

12 A. When you — I have studied two direct studies of  
13 underground gun market behavior, both of those in Baltimore;  
14 one with a youthful sample, mostly ages 15 to 20, and then  
15 another adult sample.

16 But in each case, we find that there's great hesitancy to  
17 engage in a transaction with a firearm with someone you don't  
18 know or trust. And so there's a number of things that come in  
19 to play in people's decisions and preferences about if or  
20 where they will try to purchase a gun.

21 We know the things that they care about is the reliability  
22 of the gun. If you are purchasing from someone who has a  
23 licensed business, you know, there are far more safeguards  
24 from a quality standpoint than if you just meet some stranger  
25 and said, "Hey, do you want to buy this gun?"

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1       There's also great risk to a purchaser in the underground  
2 gun market because you could show up with money to buy a gun.  
3 And, of course, that person has a gun and could simply take  
4 your money, could rob you. They could be an informant.

5       There's a variety of reasons why people are reluctant to  
6 engage in an underground exchange with someone they don't  
7 know.

8 Q. Okay.

9 A. So there may be a lot of guns in a given place. But,  
10 really, what is relevant is are they guns and suppliers that  
11 that potential purchaser trusts, trusts enough to spend money  
12 and potentially risk something if they're going to use a  
13 firearm and it's not going to work.

14 Q. Okay. Well, I do want to get to all of that, but if I can  
15 just go one step at a time. And what I want to do --

16 A. Sure.

17 Q. -- is start with the studies that you mentioned earlier,  
18 the Wright and Wintemute study. So let me do that.

19       Let me show you Plaintiffs' Exhibit 757. And I want to  
20 ask you some foundational questions about this study first.

21       First of all, can you identify Plaintiffs' Exhibit 757 for  
22 us, please.

23 A. Yes, it's a study by Garen Wintemute and his colleagues on  
24 subsequent criminal activity among violent misdemeanants who  
25 seek to purchase handguns.

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1 Q. What journal is this study published in?

2 A. Journal of American Medical Association, I believe.

3 Q. Is that a reputable journal?

4 A. It's one of -- the most reputable journal in the field of  
5 public health and medicine.

6 Q. Okay. Is this article, Plaintiffs' Exhibit 757, a  
7 reliable authority in your field?

8 A. Most definitely.

9 Q. Okay.

10 A. It is really hard to get articles published in JAMA.

11 Q. Okay.

12 A. Very, very high bar.

13 Q. Okay. Well, let's look at the abstract and just cover  
14 this study briefly. If you could --

15 A. Sure.

16 Q. I'm going to show you the abstract on Plaintiffs'  
17 Exhibit 757, and tell us what the objective of this study is.

18 A. Yeah. This study was to determine risk factors for new  
19 criminal activity among violent misdemeanants who are seeking  
20 to purchase handguns. Again, these are handguns from licensed  
21 dealers -- it's not stated there, but that's the nature of  
22 this study -- and whether denial of such purchase applications  
23 by violent misdemeanants affects their risk for arrest for new  
24 crimes they commit, particularly those involving guns or  
25 violence.

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1 Q. And what did Dr. Wintemute and Dr. Wright discover after  
2 studying that issue of whether violent misdemeanants were  
3 denied firearms?

4 A. Yeah. What they found was that -- well, actually, when  
5 you compare those who were denied their -- when they went to  
6 purchase a handgun with those who were allowed to purchase,  
7 the purchasers' rate for risk for committing new crimes of  
8 violence involving guns were 29 percent higher, with a  
9 confidence interval ranging from 4 percent higher to  
10 60 percent higher. This relationship -- and I think this is  
11 important -- did not hold for commissions of crimes that  
12 didn't involve guns or violence.

13 Q. Okay.

14 A. So this wasn't what we would refer to as a selection bias.  
15 There's just more criminal offending in one group versus  
16 another.

17 This effect of being denied was very specific to the type  
18 of events one would hypothesize if denial makes a difference  
19 in risk for future commission of acts of violence --

20 Q. Okay.

21 A. -- and those involving guns.

22 Q. And can you tell us how many people did this study  
23 examine.

24 A. Yeah. So there were -- let me see. They had follow-up  
25 information on 1,654 subjects.



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1 Q. Okay.

2 A. Yeah.

3 Q. And could you read for us the conclusion of this study.

4 A. Yeah. The results indicate that denial of handgun  
5 purchase to violent misdemeanants is associated with a  
6 specific decrease in risk of arrests for new gun and/or  
7 violent crimes.

8 Q. Okay. And it uses the phrase "violent misdemeanants."

9 Could you tell us what a violent misdemeanor is, as used  
10 in this study?

11 A. Sure. In this study, it means someone who was convicted  
12 of a violent crime classified as a misdemeanor as opposed to a  
13 felony crime.

14 Q. Okay.

15 A. So, again, based upon California's law in the early '90s,  
16 those set of individuals, at least for a period of time, until  
17 many years they've demonstrated they haven't committed any  
18 other prohibitive offenses, that they're prohibited based upon  
19 state law.

20 Q. Are there studies that examine what happens when felons  
21 are denied firearms?

22 A. Yes. That's a separate study that I examined. Mona  
23 Wright was the lead author of that. Garen Wintemute and  
24 Frederick Rivara were coauthors.

25 Q. Okay. Can I show you Plaintiffs' Exhibit 753, please.

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1 And can you identify for the Court what Plaintiffs'  
2 Exhibit 753 is.

3 A. Yes. It's an article in -- I believe this was published  
4 issued in American Journal of Public Health -- yes. Yeah --  
5 in 1999. Yeah. Thank you.

6 So what these researchers were able to do is to examine,  
7 again, a cohort of two different kinds of individuals, both of  
8 whom were -- you know, had --

9 Q. Sure. And, Dr. Webster, before we jump into that, let me  
10 just ask you a couple more foundational questions.

11 Is Plaintiffs' Exhibit 753 is a reliable authority in your  
12 field?

13 A. Yes.

14 Q. And is the American Journal of Public Health a reputable  
15 publication?

16 A. Yes.

17 Q. Okay. With that in mind, let's just take this one step at  
18 a time.

19 A. Sure.

20 Q. And I'm going to show you that highlighted portion, and I  
21 want you to read that highlighted portion to the Court and  
22 then I'd like to discuss it. Okay?

23 A. Okay. I have to adjust something on my screen so I can --  
24 part of this is blocking it, so just bear with me just one  
25 second.

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1       Okay. "We report the results of a cohort study as  
2 criminal activity among two groups of persons attempting to  
3 purchase handguns in California in 1977. The first group's  
4 handgun purchasers were denied as a result of a prior felony  
5 conviction. The second group's purchases were approved.  
6 Members of this group had prior felony arrests but no felony  
7 convictions."

8 Q. Okay.

9 A. "We hypothesized that the risk" --

10 Q. Keep going, please.

11 A. Okay. "We hypothesized that the risk for subsequent  
12 criminal activity would be lower for those whose handgun  
13 purchases were denied than for those whose purchases were  
14 approved."

15 Q. Okay. So in layman's speak, could you explain the  
16 hypothesis of this article, Plaintiffs' 753?

17 A. Yeah, I'll do my best. I think what these researchers  
18 were trying to do is say let's look at two groups, both with  
19 criminal histories. There's a variety of reasons why some  
20 might lead to convictions or not. And let's try to adjust for  
21 the differences in their criminal histories and determine  
22 whether their future offending is different, basically.

23 Q. So if I understand you, does this study examine two groups  
24 of individuals; both of which who have a violent gun arrest  
25 history?

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1 A. They're a broad group. A subset of them, their felony is  
2 specific to guns and violence arrest. Not all of them have  
3 such an arrest.

4 Q. Okay. So talking about that --

5 A. But they do have felony arrests. Sorry.

6 Q. Yes. So talking about that subset of individuals, is the  
7 article dividing that into individuals who subsequently go and  
8 purchase a gun and are denied and individuals who subsequently  
9 go and purchase a gun and have -- are granted access to that  
10 gun?

11 A. That's exactly what this is, yes.

12 Q. And so are Wright and Wintemute examining the reoffending  
13 rate of the individuals that are denied versus the reoffending  
14 rate -- violent gun violence rate of those who actually are  
15 granted access to firearms?

16 A. Yes.

17 Q. So what does that tell us? What could the results of that  
18 tell us about an individual like Devin Kelley?

19 A. Well, it would tell us whether -- at least on average in  
20 this population, whether denial lowers risk.

21 We don't know for certain whether it would apply exactly  
22 in his situation, but in my opinion, I think it would. And I  
23 can explain that.

24 Q. Yes?

25 A. That's -- he clearly falls within -- if his case would

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1 have been thrown in to the records that Wright, Wintemute, and  
2 Rivara were examining in this case, he would be included in  
3 this -- he would be included in this cite.

4 Q. Okay. Well, let's take a look at the records. And to do  
5 that, I want to show you the second page of Plaintiffs'  
6 Exhibit 753. And they have a table, Table 2, that shows us  
7 the results.

8 And if you could, take the Court through what we're  
9 looking at on Table 2 of Plaintiffs' Exhibit 753.

10 A. Could I ask to start with Table 1? Because I actually  
11 think that's foundational.

12 Q. Okay. Well, let's start with Table 1, then.

13 A. Thank you.

14 Q. So what --

15 A. Go ahead. Sorry.

16 Q. No, no. What is Table 1 showing us?

17 A. Yeah. So it is showing the crude and adjusted relative  
18 risks for committing criminal activity after an attempt to  
19 purchase a handgun, relative to persons whose purchases were  
20 denied.

21 Again, I have to adjust my screen a little bit because  
22 part of this is blocking. But that's fine.

23 So the top row shows, in essence, accrued relative risk,  
24 not adjusting for anything. And there you see -- so the  
25 relative risk, if it's 1, means that there's no difference

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1 between being denied or purchasing a gun, for example.

2 So the crude relative risk for gun and violent offenses  
3 points towards purchase elevating risk, but it is not  
4 statistically significant without first adjusting for age or  
5 prior weapon and violent arrest charges.

6 So as I look at these data, what I think is most important  
7 here is adjusting for prior -- the number of prior weapon or  
8 violent arrests. So that -- excuse me -- that third row  
9 there, that's focusing on -- the one up even above that too.  
10 The last two are relevant.

11 So the first one adjusts for prior weapon or violent  
12 arrests, the number of such cases in their history -- criminal  
13 histories. And there you see a statistically significant  
14 elevated risk for gun offenses and violent offenses if you  
15 were allowed to purchase as opposed to being denied. Also  
16 true, a very similar relationship based upon the number of  
17 prior arrest charges that did not involve a weapon or violent  
18 charges.

19 So there, I think, is the most straightforward and  
20 fundamental way to look at these -- the difference between  
21 these two cohorts; one of which was allowed to purchase, and  
22 one of which was denied. And those who were allowed to  
23 purchase had a significantly higher rate of offending after  
24 you adjust for these prior number of offenses.

25 Q. Okay. And in layman's speak, if we're going back to the

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1 two groups, one -- both subset of groups that have a violent  
2 offense or gun offense in their past, one group is denied, and  
3 the other group is allowed access to the firearm, who commits  
4 more firearms-related offenses or violent offenses?

5 A. Those who were allowed to purchase as opposed to those  
6 denied.

7 Q. Okay. And I want to look at some of the other text in  
8 this article and maybe jump to the -- to some of the  
9 conclusions that help us understand this data a little bit.

10 First, the highlight at the bottom, I want to pull that  
11 out for you.

12 A. Um-hum. Okay.

13 Q. And could you read that highlighted portion from  
14 Plaintiffs' Exhibit 753?

15 A. "Among those with only one prior weapon or violent arrest  
16 charge, purchasers were two to four times as likely to be  
17 charged with new offenses as those who were denied."

18 Q. Okay. And when they use "violent" or "arrest" -- "violent  
19 arrest charge," what do they mean by that?

20 A. Number of arrests that were connected to violent offenses  
21 or weapon offenses.

22 Q. Okay. So I guess my question is are we talking about  
23 incidents, or what they subsequently go on to get charged  
24 with?

25 A. Oh, this elevated risk for what -- are what they

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1 ultimately go on to be charged with, after they went to apply  
2 to purchase a handgun.

3 Q. Oh.

4 A. I don't know if I'm answering the right question. Sorry.

5 Q. Yeah. I guess what I'm asking is are we talking about --  
6 so, for example, among those with one prior weapon or violent  
7 arrest charge, would that be -- would that fit Devin Kelley,  
8 as we knew him in 2012?

9 A. I think it would. But, honestly, I'm not 100 percent sure  
10 based upon how these researchers would classify it.

11 Q. And could you --

12 A. Because -- yeah, sorry.

13 Q. Could you explain that.

14 A. Well, he had one incidence in which he was arrested, but  
15 he was subsequently charged with more than one violent crime.

16 So it's not 100 percent clear to me whether this would  
17 be -- he would be categorized in this group based upon his  
18 arrest, or whether he would have been -- this case would have  
19 been classified as -- as -- based upon multiple charges of  
20 violence.

21 Q. When epidemiologists do studies like this, do they look at  
22 the specifications that prosecutors end up charging an  
23 individual, or do they look at individual's incidence of  
24 arrest?

25 A. Well, more commonly, we look at incidence of arrest. You



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1 know, criminologists or law professors, perhaps, might be more  
2 inclined to look at arrest charges.

3 But I think more commonly within the field of  
4 epidemiology, we're looking at instances of cases of -- in  
5 this case, of arrest. But, again, it's not 100 percent clear  
6 from their writing, in my opinion.

7 Q. And let's look back at the broader study. And I want to  
8 ask you two more questions about the broader study.

9 A. Okay.

10 Q. In terms of comparing the two groups, that one group of  
11 violent felons that are denied weapons versus the group of  
12 violent felons that have -- are gained access to weapons, you  
13 know, more likely than not, what is your belief in terms of  
14 the impact of this study concerning the facts we know about  
15 Devin Kelley?

16 A. Yeah. So, to me, this -- what this study says is that  
17 clearly there are some individuals with serious violence  
18 charges in their history who are deterred from committing  
19 future acts of violence when they are denied when they go to  
20 purchase a handgun from a licensed dealer.

21 Mr. Kelley, you know, again, within this large cohort,  
22 some who -- the group that were denied, some were able to get  
23 a gun, and some were not.

24 What I understand about the facts in Mr. Kelley's case,  
25 Devin Kelley's case, I'm skeptical about his capacity to

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1 get -- to find a trusted supplier and a trusted gun to commit  
2 an act of the type that he committed.

3 Q. Okay. And, I guess, that's the next area I want to cover  
4 is your scientific basis for those opinions. But before we  
5 do, let me cover this last conclusion paragraph that they  
6 offer. And that's the second highlight that we have in  
7 Plaintiffs' Exhibit 753 on page 2.

8 Could you read the conclusion paragraph to the Court,  
9 please.

10 A. Sure. "We do not know whether those denied legal handgun  
11 purchase obtained a firearm by other means. But while this  
12 policy's immediate objective is to prevent acquisition of  
13 handguns by high-risk individuals, its overall goal is to  
14 reduce their rate of criminal activity. Our evidence  
15 indicates that this occurs."

16 Q. Okay. And --

17 A. So, again, what these researchers are concluding, which is  
18 similar -- basically, the same as my own conclusion, which is  
19 that this is -- this policy of denying people ability to  
20 purchase handguns based upon their criminal convictions does  
21 reduce their rate of criminal activity, including offenses  
22 with violence that involve violence and/or firearms.

23 Q. Okay. And --

24 A. So -- yeah.

25 Q. And that leads me to the next question, which is did you

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1 consider whether Kelley could have gotten firearms from  
2 someone other than a federally licensed firearm -- federal  
3 firearms licensee?

4 A. Of course. Yes, that's always a possibility.

5 Q. Right. And you previewed that information.

6 But could you tell us what are the factors that deter  
7 people from buying guns outside of the an FFL?

8 A. Yeah. I was mentioning this earlier, but I'll go through  
9 this.

10 So I think this applies to most products that we might  
11 want to purchase, but I think it's particularly important when  
12 it comes to firearms that you should be, and many are, quite  
13 particular of the quality of the product that they're getting.  
14 They want to make sure that it can fire and not jam or  
15 whatever because sometimes, of course, their life could depend  
16 upon whether the firearm works properly or not.

17 The other reasons include -- and this is something that we  
18 found in a study we conducted with youthful offenders in  
19 Maryland -- is that they were very reluctant to buy a gun from  
20 a stranger because that gun might be used -- might have been  
21 used in another crime. And if you're arrested with such a  
22 firearm, you could get a lot of unwanted attention from police  
23 and prosecutors about your potential connection to serious  
24 violent crimes.

25 So, generally, there is a preference for new so-called

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1 out-of-the-box guns that you are much more, you know, trusting  
2 that, A, they work; B, they haven't been used in violent  
3 crimes.

4 Q. Okay.

5 A. The last part -- let me -- if you don't mind --

6 Q. Yeah.

7 A. -- to complete the thought is that there's two things that  
8 you're looking for here; you're looking for trust in the  
9 product, and you're looking for trust in the supplier or  
10 seller of that firearm.

11 And what we've learned in our studies -- and this is  
12 consistent with other studies as well -- is that people are  
13 very reluctant to purchase firearms from someone they don't  
14 know and trust.

15 From what I understand of Mr. Kelley's case, he did not  
16 really have an extensive network of friends or family who were  
17 willing to buy him a gun or supply him with a gun. And so  
18 Mr. Kelley would have been forced to venture out into the  
19 rather risky and unpredictable marketplace in which you could  
20 get robbed, you could get a bad gun, you could get a gun  
21 connected to a prior crime. A whole range of other outcomes  
22 that aren't particularly an attractive to you.

23 Q. Okay. So if I understand your testimony correctly,  
24 there's sort of three factors that come into play when getting  
25 guns outside of an FFL.

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1 It's the risk involved, the reliability of the firearms,  
2 and the social network of the individual -- the immediate  
3 social network of the individual itself.

4 Did I understand you correctly?

5 A. Exactly, yes.

6 Q. So let's take those each at a time.

7 With regard to the risk involved, are there any studies  
8 and research on point?

9 A. Well, yes. The one I referred to earlier in our own  
10 studies. You can see more broadly -- there's a study that is  
11 U.S. Department of Justice study that -- based upon a  
12 representative sample of people in state prisons that ask  
13 fairly detailed questions about firearm use and acquisition.

14 What you'll find there is that the predominant way in  
15 which people acquire guns outside of licensed dealers is from  
16 family and friends.

17 There's this other category in the Department of Justice  
18 surveys -- the most recent one was 2016 -- that says it's just  
19 a rather broad and, as a researcher, a frustrating category of  
20 the street. But, again, what we found, at least from our  
21 studies -- and there's another study in Chicago with very --  
22 basically the same finding, which is, as I was saying, a  
23 great, great reluctance to engage with business on buying  
24 firearms unless you trust that underground source.

25 Q. Sure.

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1 A. So --

2 Q. And have you personally conducted any recently studies --  
3 recent studies directly on this issue of acquisition of  
4 firearms and underground markets?

5 A. Yes. We published a study recently of people on parole  
6 and probation in Baltimore city.

7 Q. And how many people did you survey?

8 A. 200 or -- roughly 200, yeah.

9 Q. And what were the results of your surveys of individuals  
10 in Baltimore?

11 A. Well, what we found is something very basic that, frankly,  
12 a lot of people don't get and understand, that they believe  
13 that, oh, anybody can get a gun anytime they want; it's a  
14 piece of cake.

15 Well, we found many people -- again, these were people on  
16 parole or probation -- who said they wanted a firearm, but  
17 they did not get one. And in many cases, they were not able  
18 to get someone to buy a gun for them, again, because there's  
19 risk all around here.

20 You need to the convergence of people who are accepting  
21 risk on the acquisition and the supply side of this exchange.

22 Q. So are you saying, so in order to get a firearm from an  
23 individual outside of the FFL, you're bringing a certain  
24 amount of cash to an individual that you know is heavily  
25 armed?

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1 A. Well, you know --

2 MS. KRIEGER: Objection. Leading.

3 THE WITNESS: -- they at least have one gun.

4 THE COURT: One second. Doctor, one second.

5 MS. KRIEGER: I said, "Objection. Leading."

6 THE COURT: That's sustained.

7 BY MR. JACOB:

8 Q. What are the causes of an individual recognizing risk in  
9 an underground gun transaction with a person they are  
10 unfamiliar with or do not know?

11 A. Well, as I -- I was saying before that there are multiple  
12 risks. I think the most direct risk is that you could be  
13 robbed, perhaps shot as well; you're bringing cash, again, to  
14 this underground exchange.

15 I mean, that's why underground marketplaces, whether it's  
16 drugs or guns or whatever, there's tons of risk there. But  
17 when you know the person you're going to engage with, with  
18 cash, has a firearm, there is reluctance and there's a risk.  
19 And there has to be some assurance that this person thinks  
20 they can trust this person with this exchange.

21 Q. Okay. And then --

22 A. And -- go ahead. Sorry.

23 Q. Well, yeah, that leads me to the second factor, the  
24 immediate social network.

25 Did you review Mr. Kelley's family testimony in trial

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1 today?

2 A. Yeah.

3 Q. And previous last week as well?

4 A. Previous. Previous, yes. Yeah. So my understanding is  
5 that his father did not trust Devin Kelley with firearms,  
6 would not give him one, would store his guns in a manner --

7 MS. KRIEGER: Objection.

8 THE WITNESS: Sure.

9 MS. KRIEGER: I think he's mischaracterizing  
10 Mr. Kelley's testimony that he did not trust Devin Kelley with  
11 firearms.

12 THE COURT: You can try to straighten that up on your  
13 own cross.

14 BY MR. JACOB:

15 Q. I'm sorry. Dr. Webster, what were you saying about  
16 Kelley's parents and wife concerning his access to firearms?

17 A. Well, they were both very concerned about it. I'll leave  
18 it at that.

19 Q. Okay. And the other aspect that you mentioned was the  
20 reliability of firearms.

21 Is there evidence that Devin Kelley preferred reliable  
22 firearms?

23 A. Well, we know that he went to FFL for his purchases. We  
24 know that at least one gun that he acquired, he wasn't  
25 satisfied with its quality, one that he did not acquire from a



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1 FFL, a personal trade, and ended up trading away because it  
2 wasn't a good quality gun. So we know that.

3 There's also some references to some Facebook postings  
4 that more generally talk about his desire to make sure that he  
5 gets a good gun, basically.

6 Q. Sure. And let me show you an example of that, and I want  
7 to see if you have an opinion on that.

8 I'm going to show you Joint Exhibit 502, pages 126 and 127  
9 together. And you should see that this is a Facebook post by  
10 Devin Kelley concerning firearms.

11 A. So can I ask for, like, a 30-second pause because my —  
12 this is embarrassing. My dog is scratching at my door, and I  
13 don't want him to rip all the paint off here. It will  
14 literally only take me 30 seconds. Is that okay?

15 THE COURT: That's fine.

16 THE WITNESS: Sorry.

17 (Pause in proceedings.)

18 THE WITNESS: All right. I'm back.

19 BY MR. JACOB:

20 Q. And I just -- so we're looking at a Joint Exhibit 502,  
21 pages 126 and 127. And I want to zoom in to the tile of this  
22 Facebook post on Devin Kelley on page 127.

23 A. Okay.

24 Q. Do you see where he says, "I just put on a magwell funnel  
25 on the rifle, and while it looks ugly, man, does it

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1 dramatically increase the consistency and speed of reloads."

2 Did I read that correctly?

3 A. Yes.

4 Q. Is that evidence that Devin Kelley preferred a reliable  
5 firearm?

6 A. Well, I think it's saying two things.

7 One, it's saying that speed of reloads and ammo capacity  
8 is important. But, of course, that is, in part, a function of  
9 reliability. Because if you're switching magazines and things  
10 jam and things like that, it's then -- you know, so it's clear  
11 that he is very intent on getting a firearm that he is going  
12 to be able to fire a lot of rounds with confidence and speed.

13 Q. And is there evidence that -- well, let me back that up.

14 Do you believe based on the information that you reviewed  
15 and the studies and literature that are published in your  
16 field, that had he been denied a firearm, more likely than  
17 not, he would have been prevented from acquiring a firearm  
18 outside of the FFL market?

19 A. I believe so, again, based upon my understanding of how  
20 underground markets work, and Mr. Kelley's quite limited  
21 options of places he could go to to get a gun.

22 Again, most of these come from friends and family. And I  
23 think, you know, just everything I've read about his  
24 incredibly troubled history from adolescence to young  
25 adulthood, I think people understood that he was troubled.

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1 Q. All right. Let me switch gears a little bit and chat with  
2 you about the importance of a reporting this criminal history  
3 to the NICS system.

4 Can your particular areas of study and expertise in your  
5 field help us understand whether the failure to report  
6 criminal history to NICS may increase the risk of physical  
7 harm to the public or not?

8 A. I think it does, based upon the research that we were just  
9 covering, based upon the impact of denial.

10 Q. And have you reached an opinion, to a reasonable degree of  
11 certainty, whether the failure to submit criminal history  
12 increases the risk of harm to the public?

13 A. Sorry. My connection may have frozen.

14 Q. Oh. Let me reask the question, Dr. Webster.

15 A. I'm sorry.

16 Q. Have you reached an opinion, to a reasonable degree of  
17 certainty, as to whether the failure to submit criminal  
18 history to the NICS increases the risk of harm to the public?

19 A. Yes.

20 Q. And what is your opinion based on?

21 A. My opinion is based upon the research that you just went  
22 over, based upon studies looking at denial of purchase  
23 applications with licensed dealers.

24 It's also based upon research, as I was alluding to, that  
25 Dr. Jeffrey Swanson led that also demonstrated the importance

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1 of availability of records to prevent people with violent  
2 histories who -- you know, from accessing firearms, that it  
3 cut their rate of violent offending basically in half.

4 So I think there's a number of studies that indicate that,  
5 of course, not everyone is deterred. But a sizeable number of  
6 people are deterred when they are denied when they go to  
7 seek -- to purchase firearms from licensed dealers.

8 Q. And I just want to make sure our record is clear.

9 What is your opinion as to whether the failure to submit  
10 Devin Kelley's criminal history to the NICS system increases  
11 the risk of harm to the public?

12 A. I think the evidence is quite clear that Mr. Kelley would  
13 not have been able to purchase the gun that he used to commit  
14 mass murder had the record been submitted.

15 Q. And are there studies or articles published in your field  
16 of science that show that missing records from the NICS system  
17 actually hurts the, you know, public safety?

18 A. Yes. As I was mentioning a minute ago, from Dr. Swanson's  
19 research, I believe I cited the one in Connecticut that  
20 verified that finding. I believe he actually has an  
21 additional newer study from a Florida population that was  
22 similar remarks -- similar findings. Excuse me.

23 So the availability of records is sort of foundational to  
24 the whole system. And we've seen that when the system works,  
25 it can reduce risk for future offending. But, of course, it's

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1 all based upon having the available record.

2 Q. Sure. And I'll represent to you that in evidence today --  
3 or evidence in this trial is evidence that the Air Force  
4 Office of Special Investigations identified over 7,300 files  
5 that should have been reported to the NICS system but was not.

6 MS. KRIEGER: I'm sorry. Objection. I don't think  
7 that actually came into evidence. I believe that objection  
8 was sustained this morning.

9 MR. JACOB: Your Honor, it's Joint Exhibit 433. It's  
10 been admitted into evidence.

11 THE COURT: Yeah. So there's some discussion among  
12 the experts about the time frame of those studies. I think  
13 those numbers -- the earlier numbers of 294, or something  
14 around those figures, was sampling of that overall number.

15 So you can try to clean that up on cross if you want.

16 Go ahead.

17 BY MR. JACOB:

18 Q. Well, let me just be very clear and show you the record  
19 itself, so we can be clear as to what we're talking about.

20 A. Sure.

21 Q. I want to show you Joint Exhibit 433.

22 And do you see Joint Exhibit 433, page 1, on your screen,  
23 sir?

24 A. Yes.

25 Q. And it is from the headquarters of the Office of Special

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1 Investigations.

2 Do you see that?

3 A. Yes.

4 Q. And I'll jump -- I don't want to take too much time, but  
5 I'll jump to the conclusion of this study on page 5, and zoom  
6 into the summary.

7 So the NCIC indexing task force here, this is -- actually,  
8 let me step back.

9 Let me show you page 2 of this document so we have some  
10 context and history. Let me show you the overview here.

11 So I'll represent to you, in response to the Sutherland  
12 Springs shooting, the Air Force tried to address the failure  
13 to submit and find out which files were not submitted to the  
14 NICS system following the Sutherland Springs shooting. And we  
15 have the overview here, but this page discusses that.

16 Have you reviewed this document, sir?

17 A. Yes.

18 Q. Okay. Let's go to the conclusion then, the summary.

19 And you see here, "Over 21 months and 14 six-week  
20 iterations, the task force reviewed 7,300 files and identified  
21 over" -- sorry -- "the task force reviewed over 73,000 files  
22 and identified over 7,300 files requiring correction."

23 My question to you, Dr. Webster, is the -- you talk about  
24 the increased risk to the public from the missing records.

25 This 7,300 missing fingerprints and final dispositions

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1 that should have been sent to the FBI by the AFOSI, just  
2 AFOSI, but weren't, is that the type of data that increases  
3 the risk of harm to the public?

4 A. Yes.

5 Q. Okay. Let me take that down. I want to switch gears  
6 again, and now talk to you about your conclusions on the  
7 foreseeability of this act.

8 Can your work in gun violence research help us understand  
9 whether the danger of future injury might be reasonably  
10 anticipated based on the particular circumstances known to the  
11 Air Force about Devin Kelley?

12 A. Yes. Devin Kelley -- I mentioned before the research we  
13 did to look at risk factors for domestic homicides and the  
14 danger assessment.

15 So Mr. Kelley, based upon information the Air Force had,  
16 you know, he would check many of the boxes that showed the  
17 greatest elevated risk for future lethal violence.

18 And they may or may not have known that research or the  
19 danger assessment. Excuse me. But they -- they knew of a  
20 very violent past. They knew of specific threats of  
21 committing mass shootings, including on the base themselves --  
22 itself. They took measures on their end based upon their  
23 perception of the riskiness of this individual.

24 So yeah. And even in the pre -- the document relevant to  
25 whether he could be released when he was on trial for domestic

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1 violence charges, the determination was that was he was too  
2 great of a risk, not only of fleeing but also of committing  
3 violence.

4 So there was a variety of things that anyone, you know,  
5 who is knowledgeable about risk for serious violence -- but  
6 particularly the Air Force also knew well before these -- this  
7 tragic incident in Sutherland Springs.

8 Q. Well, could you give us examples of the type of risk  
9 factors that put an individual at high risk for committing  
10 serious acts of violence?

11 A. Sure. The things that stand out to me, in particular, are  
12 pointing a loaded gun at the head of his spouse; hyper,  
13 hyper-control of his intimate partners, and using violence and  
14 intimidation as part of that control; prior strangulation;  
15 sexual violence -- a history of sexual violence; obviously,  
16 use of -- or excuse me, access to a firearm and -- trying to  
17 think.

18 Another, actually, factor that comes into play, but I  
19 think this comes into play later, is his abuse of animals.

20 Q. Um-hum.

21 A. But that's -- I think that may be after he was already out  
22 of the Air Force where that came to light.

23 But there was a number of things that came to light --  
24 child abuse as well, actually, and threatening -- using  
25 threats of violence against his partner's child as a way to



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1 manipulate and control her.

2 So all of those are signs of great elevated risk. And  
3 even within situations in which there is domestic violence of  
4 some sort, those behaviors are not normal even within domestic  
5 violence. They highlight and distinguish the most lethally  
6 violent individuals from those who just sometimes get upset  
7 and can't control their emotions or something.

8 His set of behavior, as well as his diagnoses when he was  
9 involuntarily hospitalized of antisocial behavior disorder,  
10 depression, suicidality, I mean, there are just a host of  
11 factors that are quite consistent with future lethal violence.

12 And the new research that's really, I think, telling us a  
13 lot more than we used to know specifically about mass  
14 violence, he checks many of those boxes as well. The research  
15 coming from what's called The Violence Project, a federally  
16 funded study of mass shooting events in the United States.

17 Q. And what boxes does Devin Kelley particularly check  
18 concerning mass violence?

19 A. History of domestic violence, for one, most important, I  
20 think; suicidality; early history of sort of getting into a  
21 lot of trouble early in life, you know, as a teen; fascination  
22 with firearms; threats of violence.

23 Many of the people who go on to commit such acts  
24 previously were telling people they were going to do that,  
25 basically.

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1 Q. In this case, is there evidence that the Air Force knew  
2 that Devin Kelley had threatened a mass violence multiple  
3 times?

4 A. My understanding is that's what he told his supervisors,  
5 from the documents that I reviewed.

6 Q. And you said that there's a connection between domestic  
7 violence and mass shooters.

8 Could you explain what you meant by that.

9 A. Well, some are more direct than others. Some of the mass  
10 murder, in essence, is of an intimate partner and often  
11 related family members. Other times, it is connected to  
12 anyone close to that individual, including that individual  
13 that they have the intimate relationship with --

14 Q. Are there studies --

15 A. -- but -- sorry. Just to complete that thought.

16 There are other instances in which people with histories  
17 of violence against women commit acts of mass murder.  
18 Sometimes they're motivated by, in essence, their  
19 frustrations. And it more broadly has to do with women.

20 Q. Well, let me ask you this: Are there studies that support  
21 the conclusion that the danger of this type of gun violence  
22 may be reasonably anticipated from the circumstances of a  
23 domestic violence offender like Devin Kelley?

24 A. Well, he -- he had the risk factors. I'll say that. And  
25 he was saying very explicitly intentions of committing

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1 violence, including mass violence.

2 So, again, he's checking all the boxes that are apparent,  
3 in a lot of cases, of mass violence. Of course, some people  
4 blow smoke and whatever, and they don't carry it out.

5 But, again, this -- all the signals in Mr. Kelley's case  
6 are really quite strong and severe, in my opinion. And they  
7 were severe enough that the Air Force themselves thought  
8 themselves to be at risk.

9 So, to me, that said a lot. All the factors and  
10 information available to the Air Force at that time were all  
11 saying that this is a violent young man who is capable of  
12 lethal violence, including mass violence.

13 Q. Okay. And is there a connection between domestic violence  
14 and gun violence?

15 A. Quite often, yes. Some people overcompartmentalize  
16 domestic violence from other, say, community violence. But  
17 when you look at the most violent individuals, they almost  
18 never are only violent in one place. They are violent in  
19 multiple contexts, and that is what I believe is the case with  
20 Mr. Kelley, Devin Kelley.

21 Q. Okay. Well, I want to go through some of these studies.  
22 And I think the first study I'd like to look at is the study  
23 that you started this discussion with from Campbell.

24 A. Yes.

25 Q. And I'll show you Plaintiffs' Exhibit 754, page 1. And

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1 zooming into the first part of that, could you identify  
2 Plaintiffs' Exhibit 754, page 1.

3 A. Yes. This is a study published in American Journal of  
4 Public Health, "Risk factors for femicide in abusive  
5 relationships: Results from a multisite case control study."

6 Q. And let me ask you this: Is this study, Plaintiffs'  
7 Exhibit 754, a reliable authority in your field?

8 A. Absolutely.

9 Q. And can you tell us who the second named author in this  
10 study is?

11 A. Yes. Myself, Daniel Webster.

12 Q. And focusing on the objectives of this study, can you tell  
13 us what the objective of this study is?

14 A. Sure. The principal objective was to draw upon these data  
15 from 11 cities to identify risk factors for femicide in  
16 abusive relationships. So the context is not all women and  
17 what their risks are, but very specifically women who are in  
18 or recently out of intimate relationships that involve  
19 physical violence.

20 Q. And I think at the beginning of our conversation, you told  
21 us that this study was one of the most cited studies in this  
22 area.

23 Do you remember that?

24 A. Yes.

25 Q. Can you explain to the Court why Plaintiffs' Exhibit 754

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1 is one of the most cited studies in the field?

2 A. You know, I can't get into the heads all the people who  
3 are citing it. But, basically, this study did one of the most  
4 important things that people wanted to do is really — we know  
5 that domestic violence is, sadly, a very common occurrence.

6 And all sorts of systems — law enforcement, service  
7 providers, health systems — encounter people who are in these  
8 kind of relationships. And researchers and practitioners and  
9 people at all levels, policymakers, keenly want to know, well,  
10 how do you know the most dangerous situation so that we make  
11 sure, from a policy perspective or a service provision  
12 perspective or a law enforcement perspective, when it's most  
13 important to intervene and with what kind of measures.

14 So that's why I think it's particularly important.  
15 Because in all the different studies that are examining this  
16 problem, we're answering a really fundamental question  
17 relevant to — both to domestic violence but even more broadly  
18 to understanding the connection between availability of  
19 firearms and ownership of firearms among people with violent  
20 histories.

21 Q. Okay. Could you tell — could you read the conclusion of  
22 this study for us real quickly.

23 A. Yeah. Again, I have to do a little slight adjustment.

24 Yeah, there are identifiable risk factors for intimate  
25 partner femicide, yes, basically.

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1 Q. And let me show you page 3 of this study real quick.

2 A. Okay.

3 Q. And I want to show you a conclusion or result that you  
4 reached.

5 A. Um-hum.

6 MR. JACOB: I'm sorry. I think you've gonna little  
7 too far. We're talking about page 3 of Plaintiffs'  
8 Exhibit 57 — 754, yes.

9 BY MR. JACOB:

10 Q. And it's the top column, starting with the paragraph  
11 "Incident-level variables" and just that first paragraph.  
12 Could you read that first paragraph to us, please.

13 A. "Incident-level variable were added in Model 7. Abuser's  
14 use of a gun in the worst incident of abuse was associated  
15 with a 41-fold increase in the risk of femicide after control  
16 for other risk factors. This effect is apparently mediating  
17 the effects of abuser's access to a gun, which was no longer  
18 significant. However, previous threats with a weapon  
19 continued to be associated with increased femicide risk."

20 Q. Okay. What does it mean when it says that there's a  
21 41-fold increase in the risk of femicide when the abuser has  
22 an access to guns?

23 A. Well, very specifically, when they use the gun in that  
24 most serious incident. So — and this has been borne out by  
25 other studies as well.

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1       It just -- it turns out that firearms are a particularly  
2 lethal form of violence. And so in the most serious act of  
3 violence, which we ask -- in the case of people who were  
4 dying, we asked proxies, people who were close to those  
5 individuals, information about background. But in the  
6 incident level, of course, we had information from police  
7 reports as well.

8       So we gather information about the most serious incident  
9 of abuse both for cases and controls. And what was in a  
10 situation where firearms were involved, those risks  
11 elevated -- were greatly different from the most serious of  
12 incident of abuse for the controls --

13 Q. So if --

14 A. -- and --

15 Q. I apologize. If I understand what you're saying, are you  
16 saying that when a -- there's a history of using a firearm in  
17 that relationship, that increases the risk of femicide by  
18 41-fold?

19 A. No. So this is actually at the incident level. So if you  
20 would back up to Model 7, we did a logical progression,  
21 basically, of sets of risk factors that we were looking at.  
22 And we looked at -- first we looked at the role of having a  
23 gun as a risk factor for lethal outcomes. It was over a  
24 fivefold increase of just having a gun.

25       You can have a gun but not use it in a serious act of

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1 intimate partner violence. So this 41-fold increase is at the  
2 next level, is when you ask people about the most serious  
3 incident of intimate partner violence, the ones that involve  
4 firearms were the ones that elevated this risk of femicide  
5 41 times above not using firearms.

6 Q. Okay. Well, Dr. Webster --

7 A. So, again, it -- again, it just sort of underscores that  
8 it can be hard to kill someone with your hands or sometimes  
9 even a knife. That a firearm, when it is used, particularly  
10 in an intimate partner femicide, is highly lethal.

11 Normally, the circumstances are such that that person  
12 cannot escape. They're not -- they can't flee, and often it  
13 ends up in a fatal outcome.

14 Q. Well, Dr. Webster, you know, what about the risk to people  
15 other than the intimate partner?

16 Are there studies on domestic violence and the risk to  
17 people beyond just the intimate partner?

18 A. Yes. I mean, in many instances of intimate partner  
19 femicide, others are killed as well. Most commonly, it is  
20 family members, but sometimes it is people who just happened  
21 to be in the same place or have some connection. It could be  
22 co-workers. It could be, you know, somebody, you know, close  
23 to that individual in some shape or form.

24 Q. Okay. Well, I'd like to go through two studies that you  
25 cited on this particular issue. First, let me show you



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1 Plaintiffs' Exhibit 762.

2 And can you identify -- and we'll make it a little bit  
3 bigger for you.

4 Can you identify Plaintiffs' Exhibit 762 for us.

5 A. Yes. This is a journal article by Linda Saltzman and  
6 colleagues. It's a group from the Centers for Disease Control  
7 and Prevention and their center that focuses on injury and  
8 violence.

9 This examines "Weapon involvement and injury outcomes in  
10 family and intimate assaults."

11 Q. Is that the title of the article?

12 A. Yes.

13 Q. Okay. Is the Saltzman article, which is Plaintiffs'  
14 Exhibit 762, a reliability authority in your field?

15 A. Yes, very commonly cited.

16 Q. Do you know the journal that the Saltzman article is  
17 published in?

18 A. I think it was JAMA, yeah.

19 Q. Okay. So let's look at the -- yeah, the abstract.

20 Could you tell us the objective of this study, the  
21 Saltzman article, Plaintiffs' Exhibit 762.

22 A. Yeah. It is to compare the risk of death and the risk of  
23 nonfatal injury during firearm-associated family and intimate  
24 partner -- intimate assaults --

25 Q. So --

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1 A. -- with the risks compared to when a firearm is not  
2 involved, non-firearm-associated events.

3 Q. So is Plaintiffs' 762 looking at more than just the risk  
4 to the intimate partner?

5 A. No. It extends out beyond that to family members as well.

6 Q. Okay. And could you briefly describe how they conducted  
7 this study and what the results of this study were.

8 A. Yeah. They were looking at police reports in Atlanta,  
9 Georgia, looking at reports that police responded to these  
10 incidents; wrote up reports of the set of facts involved in  
11 both fatal and nonfatal outcomes from these cases.

12 Q. And could you read to us the results of the study first,  
13 and then we'll talk about them. Okay?

14 A. Sure. "Firearm associated FIAs" -- again, that's family  
15 and intimate assaults -- "were three times more likely to  
16 result in death than FIAs involving knives or other cutting  
17 instruments, and 23.4 times more likely to result in death  
18 than FIAs involving other weapons or bodily force. Overall,  
19 firearm-associated FIAs were 12 times more likely to result in  
20 death than non-firearm-associated FIAs."

21 Q. So what is the point of this study in terms of its  
22 relevance to your conclusions?

23 A. The point of this study really -- it shows that access to  
24 a firearm and use of a firearm greatly determines the outcomes  
25 of an act of violence, particularly in the context of family

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1 and intimate violence.

2 Q. Okay. I want to keep along this -- the theme of not just  
3 intimate partners but going beyond that scale and see if  
4 domestic violence is connected to deaths beyond the intimate  
5 partner. And I want to show you Plaintiffs' Exhibit 758.

6 A. Okay.

7 Q. I'm sorry. Sorry, 785. I apologize.

8 So let me show you page 2 of Plaintiffs' Exhibit 785.

9 A. Um-hum.

10 Q. And I'll just zoom in to the first part, and could you  
11 identify the article that you're seeing as Plaintiffs' 785.

12 MS. KRIEGER: Objection. Your Honor, I believe that  
13 this study along with several others were part of the opinions  
14 that Dr. Webster issued in his supplemental declaration and  
15 which Your Honor excluded during our -- in your order  
16 following our motion to exclude Dr. Webster.

17 THE COURT: So 785 has not been admitted yet.

18 Your response?

19 MR. JACOB: Well, Your Honor, I was laying foundation  
20 for the reliable -- learned treatise exemption to the hearsay  
21 rule. But addressing the objection in particular, Your Honor  
22 didn't carte blanche exclude all of the studies that the  
23 government -- in the supplemental report. Instead, Your Honor  
24 delineated it into two specific categories that were  
25 admissible that were directly responsive to the issues that

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1 the government raised in Dr. Webster's deposition.

2 And this study is directly responsible -- responsive  
3 to the issues raised in the depositions.

4 THE COURT: Let me take this one question at a time.  
5 Go ahead.

6 MR. JACOB: Yes, Your Honor.

7 BY MR. JACOB:

8 Q. So, Professor -- Dr. Webster, could you identify  
9 Plaintiffs' 785 for the Court, please.

10 A. Yes. This is an article from the journal Homicide  
11 Studies, 2014, "Patterns of multiple family homicide."

12 Q. And is the article that we are showing you as  
13 Plaintiffs' 785 a reliable authority in your field?

14 A. Yes.

15 Q. And can you tell us where this article is published?

16 A. A journal called Homicide Studies. It's a  
17 multidisciplinary journal focused, as the name implies, on  
18 understanding homicides and lethal violence.

19 Q. Is that an authoritative publication in your field?

20 A. It gets cited it all the time.

21 Q. Okay. I want to talk to you about the specific goals of  
22 this study and how you used this study. Okay?

23 A. Sure.

24 Q. First, looking at the abstract, can you tell us what the  
25 goal of the study, Plaintiffs' 785, was?

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1 A. Yeah. So as this lays out here, the prior research  
2 treated multiple family homicide, something called  
3 "familicide," as a uniform event, but they want to explore  
4 whether there are subtypes of this type of event that could be  
5 discerned.

6 Looking at data from supplemental homicidal reports, which  
7 is the detailed data collected as part of the FBI's Uniform  
8 Crime Reporting system, they coupled that information with  
9 data from newspaper -- published in newspaper articles to look  
10 at 238 cases in this -- what they refer to as a two-step  
11 cluster analysis, showing that there are important  
12 subgroups -- in this case, four categories -- based upon age,  
13 relationship between the perpetrator and victims, and  
14 perpetrator suicide.

15 Q. And what are the four categories of domestic violence  
16 offenders that Plaintiffs' 785 discovered?

17 A. One was despondent husbands, spousal revenge, extended  
18 parricide, and diffuse conflict.

19 Q. Okay. I want to take a look at the "diffuse conflict"  
20 section of this article, and I want to show you Plaintiffs'  
21 Exhibit 785, page 12.

22 A. Okay.

23 Q. And we'll zoom in on the "diffuse conflict" section. And,  
24 first, could you read the description -- the first sentence,  
25 the description of diffuse conflict familicides that were

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1 found as a cluster of domestic violence offenses in this  
2 study.

3 A. You just want me to read this part?

4 Q. The first sentence, please.

5 A. Okay. "Diffuse conflict familicides represent the  
6 second-largest familicide cluster and could be distinguished  
7 from the above-mentioned clusters by the diverse constellation  
8 of victims ranging from in-laws, uncles, aunts, cousins, and  
9 secondary family relations."

10 Q. Okay. And I want to show you one more paragraph from this  
11 section, going back out to this page, the very next paragraph.

12 A. Um-hum.

13 Q. And could you read the first two sentences for us, please.

14 A. Sure. "In contrast to earlier research merely focusing on  
15 just one type of multiple family homicides, we revealed the  
16 existence of four separate groups. What all four familicide  
17 categories had in common, other than the defining fact that  
18 the victims consist of multiple family members, was the  
19 presence of primary and secondary victims."

20 Q. Okay. And I want to stay on this.

21 What is a primary versus secondary victim in domestic  
22 violence?

23 A. Well, primary victim is the person you are kind of  
24 directing your aggression at. Secondary are those because  
25 they have some connection to that primary person, again,

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1 someone important to them. Could be a sibling, a parent, you  
2 know, any number of relationships, just that they're very  
3 close to the primary victim.

4 Q. Okay. And could you read the rest of that paragraph,  
5 starting with "secondary victims," into the record, please?

6 A. Sure. Yeah. "Secondary victims were either killed  
7 because they were seen as extensions of the primary victim or  
8 because of their physical closeness to the primary victims.  
9 Arguably, this even accounts for the despondent father who  
10 perceives his victims not as extensions of each other but  
11 rather as extensions of himself. Such men consider themselves  
12 to be the central figure in the lives of their family members  
13 and, as such, aim to protect his loved ones by taking them  
14 along with his suicide."

15 Q. Okay. Is the data that this study, Plaintiffs' 785, is  
16 looking at a small sample set of data?

17 A. I believe there's 238 cases overall that they were  
18 analyzing.

19 Q. And was it a very detailed examination?

20 A. Yes, quite detailed.

21 Q. Okay. Let me take that down, and I want to finish off our  
22 discussion on this point with how your field defines domestic  
23 violence.

24 Does your field limit the definition of domestic violence  
25 or a crime of domestic violence to abuse or injury towards

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1 only an intimate partner?

2 A. No.

3 Q. How does --

4 A. No.

5 Q. How does your field define a crime of domestic violence?

6 A. Well, most studies that are studying domestic violence,  
7 honestly, they're based upon databases like this supplemental  
8 homicide report where individuals are categorized.

9 And so "domestic violence" typically means family members  
10 broadly or, in some cases, those who are cohabitants, in  
11 essence, part of a family unit whether they're actually,  
12 technically, family or not.

13 Q. You know, in the studies that we just looked at, we saw  
14 that some domestic violence crimes extend beyond the family to  
15 people that are in the perpetrator's way or in close proximity  
16 to the perpetrator's intended crime.

17 Do you remember that discussion?

18 A. Yes.

19 Q. The fact that people other than family members are injured  
20 in the process of a crime of domestic violence, does that make  
21 it no longer a crime of domestic violence?

22 A. It depends upon how you're defining it. Again, if you're  
23 going to be rigid about categorizations, it depends on the  
24 study and how people are defining it.

25 But I think conceptually what's important is the



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1 connection to the intimate partner and/or family member. It's  
2 all about relationships. And sometimes they're easy to very  
3 directly categorize, and sometimes less so.

4 But generally speaking, the phenomenon of interest here is  
5 familial and intimate relationships. And, again, there are a  
6 subset of individuals of abusers who are hypercontrolling.  
7 And, of course, if you are trying to control someone, often  
8 that means there are connections to the people who are close  
9 to them. Often, they're family members.

10 Q. And I guess getting directly to the point, in your opinion  
11 and based on your background, education, training, and  
12 experience in this field, was the Sutherland Springs shooting  
13 on November 7th, 2017, [verbatim], a crime of domestic  
14 violence?

15 A. I think it was motivated by domestic violence, most  
16 certainly. And that's, I think, a proper lens to view it.

17 Q. And have you reached a conclusion, to a reasonable degree  
18 of probability, as to whether the Sutherland Springs mass  
19 shooting on November 7th, 2017, was foreseeable based on what  
20 the Air Force knew of Devin Kelley at the time he was in the  
21 Air Force?

22 A. Well, again, I guess I'm hesitant to say they would know  
23 exactly what was going to happen. That's, frankly,  
24 impossible.

25 But I think it is certainly foreseeable, highly

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1 foreseeable, that Mr. Kelley could carry out a very serious  
2 act of violence, including mass violence. So, again, I don't  
3 want to say that they knew that on a particular date and a  
4 particular place and so on and so on. I mean, that's  
5 impossible.

6 But, again, it's evident to me that his history of severe  
7 violence, his history of mental illness connected to  
8 violence — of course, a lot of times, mental illness has  
9 nothing to do with violence. But in this case, it clearly,  
10 apparently, did. And also his prior threats relevant to mass  
11 violence involving firearms.

12 I think all of those are quite, you know, foreseeable that  
13 this was an individual who could really carry out really  
14 serious acts of violence.

15 Q. And what opinion do you hold, if any, to a reasonable  
16 degree of probability, that reporting Devin Kelley's criminal  
17 history to the FBI by the Air Force would have prevented the  
18 shooting?

19 A. Am I — I'm sorry. Can you rephrase. I want to make sure  
20 I'm just responsive very specifically to what you're asking.

21 Q. Sure. Do you have an opinion as to whether — to a  
22 reasonable degree of probability, whether if the Air Force had  
23 reported Devin Kelley criminal history to the NICS, that would  
24 have presented Devin Kelley's ability to acquire these  
25 firearms that — and commit the mass shooting on November 7th,

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1 2017 -- November 5th? I apologize.

2 A. Yeah, I do.

3 Q. And what is your opinion?

4 A. Yeah. My opinion is that the failure to report those  
5 records did allow this to happen, facilitated this outcome.

6 MR. JACOB: Your Honor, at this time, we pass the  
7 witness.

8 THE COURT: Thank you.

9 MS. KRIEGER: Your Honor --

10 THE COURT: Let's go ahead and take a ten-minute  
11 break.

12 There are two members of the attendees who are  
13 raising their hands. To those two people, Mr. Ramsey and  
14 Ms. Workman, and Mr. Herrera -- who is a lawyer, I believe --  
15 so you can't -- this is a courtroom proceeding. And so like  
16 in any courtroom proceeding, the individuals in the gallery  
17 would not be allowed to pose questions or ask questions. And  
18 so that's the case here as well. So I'll be removing the hand  
19 gesture, and that's why.

20 Anything we need to take up at this time before we  
21 take a break?

22 MR. STERN: Your Honor, just very briefly, I think  
23 it's about 2:00 now. Your Honor suggested you have a meeting  
24 at 4:00. As of right now, I believe we only have one witness  
25 tomorrow, and I can't promise that we're going to finish up

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1 our cross by 4:00. So we ask for the opportunity to maybe  
2 call this witness back in, if necessary, tomorrow.

3 THE COURT: So I already told my 4:00 I can't do. So  
4 we'll just truck on today. And if this continues to tomorrow  
5 morning with Mr. Webster, we'll see. We'll see what headway  
6 we make today.

7 MR. STERN: Fair enough.

8 MR. ALSAFFAR: I just want to clarify, because this  
9 morning, we were told there were two witnesses tomorrow from  
10 the government.

11 MR. STERN: So remember, we removed Mr. Breyer. And  
12 then we suggested we can move up Mr. Barborini to Tuesday or  
13 leave him on Wednesday. But either way, it will leave one day  
14 where we only have one witness.

15 MR. ALSAFFAR: No problem.

16 MR. STERN: That's why I want to know in advance of  
17 tomorrow, obviously, whether or not we call to call  
18 Mr. Barborini tomorrow. That's why I was suggesting, if we're  
19 going to carry Dr. Webster over to tomorrow morning and then  
20 we maybe can start our case in chief tomorrow afternoon.

21 But, obviously, I defer to the Court.

22 THE COURT: Well, let's see how we do. We've got  
23 three hours here yet, and maybe we can finish off Mr. Webster.

24 Let's take a -- let's be back at 2:15.

25 (Recess.)

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1 THE COURT: Cross?

2 MS. KRIEGER: Thank you.

3 CROSS-EXAMINATION

4 BY MS. KRIEGER:

5 Q. Dr. Webster, can you hear me?

6 THE COURT: Dr. Webster, you're on mute. There you  
7 go.

8 THE WITNESS: Yes. I can hear you. Sorry.

9 BY MS. KRIEGER:

10 Q. My name is Jocelyn Krieger. I'm an attorney with the  
11 United States Department of Justice. I'm representing the  
12 government in this case.

13 Now, Dr. Webster, you are, among other things, an expert  
14 among gun violence and gun violence prevention; is that right?

15 A. Yes.

16 Q. And epidemiology is your method of studying gun violence  
17 and prevention?

18 A. Yes.

19 Q. You're not an expert in psychology; correct?

20 A. No.

21 Q. And you don't -- you said -- you testified earlier that  
22 you do not usually look at individual cases as part of your  
23 work; correct?

24 A. Actually, I think what I said is that my research involves  
25 both some studies that are individual-focused, but many are

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1 population-focused.

2 Q. I understand that some of your studies look at risk  
3 factors that are associated with individuals, but you  
4 generally don't look at specific individual cases as part of  
5 your work?

6 A. Well, the individual cases would be part of those  
7 individual-level studies --

8 Q. It's not --

9 A. -- of the type that I was talking about earlier with the  
10 case control study for intimate partner femicide.

11 Q. Let me put this a different way.

12 It's not the nature of your job to predict individual  
13 behavior; correct?

14 A. Well, some of my research is designed with that intent.

15 Q. But you, in your job, do not generally try to predict  
16 individual behavior in the future?

17 A. Well, as I said, the reason we do studies of the nature of  
18 the risk factors for intimate partner femicide is to predict  
19 future risk.

20 Q. Do you recall being deposed in this case?

21 A. Yes.

22 Q. It is your testimony today that part of the nature of your  
23 job is to predict individual behavior; is that correct?

24 A. I study a lot of different things, and I use different  
25 research designs. Some of my studies are focused on

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1 individuals, and those studies are looking at risk factors for  
2 future violence.

3 I'm not sure what else to say about that. I'm sorry.

4 Q. I'm just going to show you -- do you recall being deposed  
5 in this case?

6 A. Of course.

7 Q. And do you recall being under oath in your deposition?

8 A. Of course.

9 Q. I'm going to show you a page from that deposition. It's  
10 Government Exhibit 62, page 59. And let's look at lines 4  
11 through 7.

12 Mr. Furman asked you, "I mean, before this case, have you  
13 had instances where you had to predict individual behavior."

14 And you responded, "That's not the nature of my job, no."

15 Did I read that correctly?

16 A. Yes.

17 MS. KRIEGER: You can take that down.

18 BY MS. KRIEGER:

19 Q. In your --

20 A. I'm sorry?

21 Q. I'm sorry. I was telling our tech person to take down the  
22 exhibit.

23 In your epidemiology work, as you said, you attempt to  
24 determine risk factors for people that engage in gun violence  
25 or domestic violence?

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1 A. Yes.

2 Q. Now, when you're doing these studies, such as the 11-city  
3 study that, I think, you've mentioned a couple times, you're  
4 looking at cases where someone has already committed violence  
5 to determine what factors are associated with that violence;  
6 is that right?

7 A. We examine factors that were present before the outcomes,  
8 in this case, for intimate partner homicides. The nature of  
9 the -- the design of the study is a case control study  
10 because, as I was alluding to earlier in my testimony, that it  
11 is simply too expensive and too impractical to gather the kind  
12 of detailed information relevant to this problem to study --  
13 to follow thousands and thousands of people.

14 So what we do is we gather information on cases, in this  
15 case, women who were killed by an intimate partner. And then  
16 we gather information about the history prior to those events.

17 Q. Right. So you were looking at women who had already been  
18 killed and then, going back, looking at the history that  
19 occurred prior to that to determine risk factors; correct?

20 A. That's correct.

21 Q. You mentioned briefly when you were talking about your CV  
22 that at one point, you were a social worker in Kentucky?

23 A. Yes.

24 Q. And that was from 1982 to 1983; correct?

25 A. Yes.



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1 Q. One year?

2 A. I was there for, I think, 20 months. I'm not sure.

3 Q. So a little less than two years?

4 A. Yeah.

5 Q. It was about 38 years ago?

6 A. Um-hum.

7 Q. I just want to ask you for a minute -- can we pull up  
8 Docket 206, page 9.

9 And I'll represent to you that this is a pleading that was  
10 filed by plaintiffs' counsel in this case.

11 Now, that's you, listed as Number 3; correct?

12 A. That's me.

13 Q. Okay. Can we go to -- I think it's the next page or maybe  
14 the page after. Yes.

15 So looking at page -- this page as well as the page  
16 afterwards -- Megan, can you just go to the next page too.

17 This is a list of documents that you reviewed prior to  
18 writing your report; correct?

19 A. Yes.

20 Q. And then after your reported was issued, you reviewed  
21 additional documents; correct?

22 A. Yes.

23 Q. You reviewed documents from the Texas Rangers  
24 investigation that occurred after the shooting?

25 A. Yes.

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1 Q. You reviewed those after you submitted your report?

2 A. I believe so, yes.

3 Q. And then you also later reviewed the deposition of  
4 Danielle Kelley; correct?

5 A. That's correct.

6 Q. And at some later point, you also reviewed the  
7 depositions, I'm guessing, of Michelle Shields, Michael  
8 Kelley, and Rebecca Kelley?

9 A. Yes.

10 Q. And none of those documents or depositions changed any of  
11 your opinions from your original report?

12 A. No.

13 Q. You just spoke with plaintiffs' counsel about some of  
14 those opinions. I just want to take a look at a few of them.

15 Pull up the report on page 14.

16 And it is your opinion — sorry. I'm trying to — it's  
17 hard to see.

18 Starting with, "It is more likely than not."

19 Do you see that?

20 A. I'm trying to find where you're at on the page. Sorry.

21 Q. Yeah, I'm trying to make it bigger for you. There we go.

22 A. Oh, okay.

23 Q. Your opinion in your report was stated as "It is more  
24 likely than not, based on the above research and my

25 background, had the United States Air Force or Department of

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1 Defense reported the relevant disqualifying information  
2 concerning Devin Kelley to the FBI, that would have prevented  
3 Kelley's ability to purchase firearms and his ability to kill  
4 26 people at the First Baptist Church of Sutherland Springs."

5 Did I read that correctly?

6 A. Yes.

7 MS. KRIEGER: You can take that down.

8 BY MS. KRIEGER:

9 Q. After you provided this report, you were deposed; correct?

10 A. Yes.

11 Q. And after your deposition, the United States filed a  
12 motion to exclude your testimony?

13 A. Yes.

14 Q. And in response to that motion, you submitted a  
15 supplemental declaration; correct?

16 A. Correct.

17 MS. KRIEGER: Let's pull up the supplemental  
18 declaration, page 2, paragraph -- I believe it's paragraph 4.

19 BY MS. KRIEGER:

20 Q. Now, here, you stated -- in your second question, you  
21 stated that your "report and testimony answer the specific  
22 causation question in this case, if the United States had  
23 followed the law, whether that would have prevented  
24 Devin Kelley from acquiring the firearms he used in the  
25 Sutherland Springs shooting."

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1 Did I read that correctly?

2 A. Yes.

3 Q. It's a little bit different; right?

4 A. I'm not sure what you mean.

5 Q. Initially, your opinion was that if the -- Kelley's  
6 information had been submitted to NICS, it would have  
7 prevented Kelley's ability to purchase firearms. And your  
8 later opinion is that it would have prevented Kelley from  
9 getting the firearms that he used; is that correct?

10 A. Yeah. That would include the firearms that he used in  
11 this Sutherland Springs shooting.

12 MS. KRIEGER: Pull that down.

13 BY MS. KRIEGER:

14 Q. Now, you relied on quite a few studies in both your report  
15 and supplemental declaration; correct?

16 A. Correct.

17 Q. And we've already seen a number of them today, and you  
18 agreed that those were all reliable authorities; right?

19 A. Yes.

20 Q. Do you agree that all of the studies you cite in your  
21 report are reliable authorities?

22 A. Yes.

23 Q. We can look at a couple of them.

24 Several of these studies actually state that people who  
25 are prohibited from owning firearms commonly acquire firearms

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1 without background checks; isn't that correct?

2 A. Yes.

3 Q. Okay. Let's look at the study -- you mentioned this a  
4 couple times -- the study by Jeffrey Swanson, "Preventing gun  
5 violence involving people with serious mental illness." It's  
6 PEX 782.

7 A. Um-hum.

8 MS. KRIEGER: And let's turn to page 13, and it's  
9 going to actually be going on to page 14. Pull out the  
10 bottom -- that bottom paragraph there.

11 BY MS. KRIEGER:

12 Q. I assume it's Dr. Swanson states, "Considering our study  
13 population as a whole, we find little evidence that the Brady  
14 Act prohibitions serve to reduce the risk of violent crime.  
15 Indeed, having a gun disqualifying criminal record serves as a  
16 marker for significantly" -- pull up the top of the  
17 paragraph -- "significantly increased risk of committing a  
18 future violent crime.

19 "To the extent that guns were involved in the commission  
20 of these crimes by people who could not legally buy a gun, it  
21 is clear that perpetrators did not need to patronize a  
22 federally licensed gun dealer and undergo a background check.  
23 Other ways, means, and suppliers abound for those willing to  
24 exploit them."

25 Did I read that correctly?

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1 A. Yes.

2 MS. KRIEGER: And then turning to page 18. Should be  
3 on line -- yes, top, first full paragraph.

4 BY MS. KRIEGER:

5 Q. It says, "Our study results suggest that among people with  
6 mental illness who have a history of criminal offending and  
7 involvement with the justice system, existing law and policy  
8 designed to prevent access to firearms through federally  
9 licensed gun dealers is likely to be of limited  
10 effectiveness."

11 Did I read that correctly?

12 A. Yes.

13 Q. In your report, you also referred to several studies by  
14 Garen Wintemute. But I'm just, right now, going to talk about  
15 the one titled "Background checks for firearm purchases:  
16 Problems and recommendations to improve effectiveness."

17 It's PEX 765.

18 Let's go to page -- do you recognize this document?

19 A. Yes.

20 Q. This is a document that you cite in your report?

21 A. Yes.

22 Q. And you consider Garen Wintemute to be a reliable  
23 authority?

24 A. Most definitely.

25 MS. KRIEGER: Let's look at page 2, at the top of

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1 column 2, the second column there.

2 BY MS. KRIEGER:

3 Q. It says, "About 22 percent of all firearm transfers in the  
4 United States proceed without background checks."

5 Did I read that correctly?

6 A. Yes.

7 Q. And then the next paragraph, "For a prohibited person or a  
8 purchaser with criminal intent, a private-party transaction is  
9 essential. Not surprisingly, the vast majority, about  
10 90 percent, of firearms used in crime are obtained through  
11 transactions that do not involve background checks."

12 Did I read that correctly?

13 A. Yes.

14 Q. You also cite to a study by April Zeoli and Jennifer  
15 Paruk. It's entitled "Potential to prevent mass shootings  
16 through domestic firearms restrictions."

17 And that's from Criminology & Public Policy; correct?

18 A. That's correct.

19 MS. KRIEGER: It's PEX 750.

20 BY MS. KRIEGER:

21 Q. You were actually an advisory to Dr. Zeoli, weren't you?

22 A. Yes, I was.

23 Q. You would agree that she's a reliable authority?

24 A. Yes.

25 MS. KRIEGER: Let's turn to page 14.

DANIEL WEBSTER - CROSS

1 BY MS. KRIEGER:

2 Q. It starts with "it may be possible." Do you see where  
3 that is?

4 Sorry. I'm going to call out the section.

5 "It may be possible, however, for the disqualified  
6 individual to purchase a firearm without a background check.  
7 Private sellers in many states are not legally required to  
8 perform background checks to sell their firearms."

9 Did I read that correctly?

10 A. Yes.

11 Q. You yourself have also stated that 80 percent of firearms  
12 acquired for criminal purposes are acquired through  
13 private-party transfers; is that correct?

14 A. Yes.

15 Q. In some states -- you can take that down.

16 In some states, private sales do actually require  
17 background checks; right?

18 A. Yes.

19 Q. That's not the case in Texas, is it?

20 A. No.

21 Q. Now, many of the studies that you cite in your original  
22 report and in your declaration are about intimate partner  
23 homicide; is that right?

24 A. Yes.

25 Q. Actually, one of those studies defines "intimate partner



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1 homicide" as those homicides in which the primary suspect was  
2 the current or former romantic partner, including spouse or  
3 nonmarried partner.

4 Do you agree with that definition?

5 A. Yes.

6 Q. That's actually -- the study is actually "Suicide and  
7 additional homicides associated with intimate partner  
8 homicide," which is -- we don't have to pull it up. It's  
9 PEX 763.

10 That study focuses specifically on intimate partner  
11 homicide and related suicides and additional homicide victims;  
12 correct?

13 A. That's correct.

14 Q. And you've mentioned a few times the study led by  
15 Campbell, of which you're the second author. I think we  
16 looked at it in some great detail.

17 That study, "Risk factors for femicide and abusive  
18 relationships," PEX 754. Yeah?

19 A. Yes.

20 Q. And actually, in your report, you describe that study as  
21 an 11-city case control study of risk factors for intimate  
22 partner femicide among those who were in intimate  
23 relationships with history of physical violence; is that  
24 correct?

25 A. Yes.

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1 Q. This is looking at women who are killed by their intimate  
2 partners; right?

3 A. Yes.

4 Q. There's another study that you cite. It's -- the lead  
5 author is Jane Koziol-McLain, titled "Risk factors for  
6 femicide-suicide and abuse relationships."

7 You're a coauthor on that study as well; right?

8 A. Yes.

9 Q. In your report, you describe that study as one where you,  
10 "looked at factors associated with intimate partner  
11 femicides." Correct?

12 A. Correct.

13 Q. Just one more study. Again, the lead author is April  
14 Zeoli. The second author is McCourt, "Analysis of the  
15 strength of legal firearms restrictions for perpetrators of  
16 domestic violence and their associations with intimate partner  
17 homicide."

18 And you're a coauthor on that study as well; right?

19 A. Yes, I am.

20 Q. And you cited that study in your report?

21 A. Yes.

22 Q. And you described that study as one "designed to  
23 understand the impact of firearm restrictions on population  
24 level rates of intimate partner homicide." Correct?

25 A. Correct.

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1 Q. These are some of the studies on which you base your  
2 conclusions in your report; correct?

3 A. Correct.

4 Q. None of these studies assessed mass shooters?

5 A. None of those studies you cite address mass shooters  
6 directly.

7 Q. Devin Kelley did not commit intimate partner homicide;  
8 right?

9 A. That's correct.

10 Q. Danielle Kelley is still alive?

11 A. She is, thankfully.

12 Q. Now, in your original report, you state -- and I think you  
13 state it again in your direct testimony -- that many of the  
14 risk factors for intimate partner homicide are common among  
15 those who commit mass shooting; is that right?

16 A. Yes.

17 Q. And one of the studies you cite to support that statement  
18 is that study by April Zeoli that we've already mentioned,  
19 "Potential to prevent mass shootings through domestic firearm  
20 restrictions," PEX 750.

21 Let's pull that back up.

22 A. Yes.

23 MS. KRIEGER: Now, looking at page 15 of that study,  
24 I think it is the -- yeah, the first full paragraph. Can you  
25 make that larger.

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1 BY MS. KRIEGER:

2 Q. They state in that study, "We do not suggest that domestic  
3 violence perpetration be viewed as a predictor of mass  
4 shootings. Certainly, only a small fraction of individuals  
5 who commit domestic violence will conceive of, plan, or commit  
6 a mass shooting."

7 Did I read that correctly?

8 A. Yes.

9 Q. In fact, in your own research, you found no evidence that  
10 laws designed to keep firearms from perpetrators of domestic  
11 violence have affected mass shootings connected to domestic  
12 violence; is that correct?

13 A. Yes.

14 MS. KRIEGER: Just pull up that article. It's  
15 Government Exhibit 102.

16 BY MS. KRIEGER:

17 Q. You're the -- this article is titled "Evidence concerning  
18 the regulation of firearms design sale, and carrying on fatal  
19 mass shootings in the United States." Correct?

20 A. Correct.

21 Q. And you're the lead author of this article; correct?

22 A. Correct.

23 Q. You'd agree that your own study is a reliable authority;  
24 correct?

25 A. Yes.

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1 MS. KRIEGER: Let's look at page 17. I think it's in  
2 the middle of a paragraph, so I may have to search a little  
3 bit.

4 BY MS. KRIEGER:

5 Q. It starts "28 percent of the shootings." I believe  
6 it's -- got it.

7 Yeah. So middle of that paragraph there, "28 percent of  
8 the shootings in this study" -- sorry -- just to back up a  
9 second.

10 Here, you were studying specifically mass shootings;  
11 correct?

12 A. Yes.

13 Q. "28" --

14 A. Fatal -- just to be clear, "fatal mass shootings,"  
15 principally defined, four or more victims killed.

16 Q. Thank you. Thank you for clarifying that.

17 It says, "28 percent of the shootings in this study had  
18 some connection to domestic violence, yet we found no evidence  
19 that laws designed to keep firearms from perpetrators of  
20 domestic violence have affected mass shootings connected to  
21 domestic violence."

22 Did I read that correctly?

23 A. Yes.

24 MS. KRIEGER: Okay. Take that down.  
25

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1 BY MS. KRIEGER:

2 Q. You cite to a few studies regarding -- you talked about a  
3 few studies about whether denials of handgun purchases have a  
4 deterrent effect; correct?

5 A. Yes.

6 Q. Specifically, you talked about a study led by Garen  
7 Wintemute, "Subsequent criminal activity among violent  
8 misdemeanants who seek to purchase handguns."

9 A. Yes.

10 MS. KRIEGER: That was PEX 757. Let's pull that one  
11 up.

12 BY MS. KRIEGER:

13 Q. You talked quite a bit with Mr. Jacob, so I don't need to  
14 belabor it.

15 This study compared people with violent misdemeanors who  
16 attempted to buy guns before and after California outlawed  
17 sales to those people; right?

18 A. Correct.

19 Q. And it looked at whether those individuals were arrested  
20 during the three-year follow-up period?

21 A. Yes.

22 Q. So if those individuals committed violence either with or  
23 without a gun but were not arrested, that data would not be  
24 included in this study; correct?

25 A. That's correct.

DANIEL WEBSTER - CROSS

1 Q. In fact, most violent behavior is not reported, and it's  
2 difficult to measure; right?

3 A. Yes.

4 MS. KRIEGER: Let's look at page 7, bottom of the  
5 second column.

6 BY MS. KRIEGER:

7 Q. It says, "The records" -- I think it's the last paragraph  
8 in the second column. Here we go.

9 It says, "Because the criminal records data were not  
10 sufficiently specific, we were unable to categorize crimes  
11 systematically as involving guns, violence, both, or neither."  
12 Correct?

13 A. Yes.

14 Q. And when they're talking in this study about guns or  
15 violent crime, we can't actually be sure whether these  
16 individuals committed a gun crime or a violent crime or both;  
17 is that right?

18 A. Yeah. They were in these broad categories.

19 Q. Let's go back to --

20 A. Because --

21 Q. Sorry. Go ahead.

22 A. I'm just saying that they could only provide the broad  
23 categories.

24 Q. Of course.

25 Let's look at Table 2, which is on page 4.

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1 A. Okay.

2 Q. Looking at the line where it says "purchase status." And  
3 it says "denied" and "approved" there.

4 Do you see that?

5 Can you highlight that all the way across the line.

6 A. Um-hum.

7 Q. Of the people who were denied, 20.1 percent were later  
8 arrested for gun or violent crimes; is that correct?

9 Gun and/or violent crimes?

10 A. Yeah. I just want to make sure I'm reading this  
11 correctly.

12 Yes.

13 Q. And among the people who purchased guns, 23.9 percent were  
14 later arrested for gun or violent crimes; correct?

15 A. Correct.

16 Q. And I think you actually mentioned in your supplemental  
17 declaration that, among the denied group, there were only  
18 eight people charged with gun or violent crimes for every  
19 100 years of person follow-up.

20 Do you see that there?

21 A. Yes.

22 Q. And among the approved group for the same statistics, it's  
23 only 9.9 people charged with gun or violent crimes per  
24 100 years of follow-up; correct?

25 A. Yes.



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1 MS. KRIEGER: Let's look at Table 2 -- I'm sorry,  
2 Table 3, which is on page 6.

3 BY MS. KRIEGER:

4 Q. You talked about this a little bit with Mr. Jacob.

5 Now, what we're looking at under "purchase status,"  
6 "denied" or "approved," the column "gun and/or violent crime  
7 adjusted relative hazard."

8 Now, you noted that based on this -- this is a multivaried  
9 regression analysis; right?

10 A. Yes.

11 Q. So based on that regression analysis, violent offenders  
12 who were allowed to purchase handguns subsequently had a rate  
13 of offending for violent and/or gun crimes that was 29 percent  
14 higher than those with similar histories who were denied  
15 handgun purchases.

16 And I apologize for the math here, but a 29 percent higher  
17 rate for those with similar histories is essentially the same  
18 thing as a 22.5 percent reduction in future violence for those  
19 who were denied; is that right?

20 A. I haven't done the math, but it's probably pretty close.

21 Q. Dividing 1.29 by 1?

22 A. Um-hum.

23 Q. Okay. So that means that three out of four people who  
24 were denied are still going to commit -- or were still going  
25 to commit a gun or violent crime even though they're denied;

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1 correct?

2 A. Approximate, yep.

3 Q. You also talked -- you can pull this study down -- talked  
4 about the study headed by Mona Wright, "Effectiveness of  
5 denial of handgun purchase to persons believed to be at high  
6 risk for firearm violence." That's PEX 753.

7 Now, again, this study looked at -- the follow-up was  
8 looking at charges that were made for new offenses; is that  
9 correct?

10 Do you want me to pull it out? I think it's the top  
11 paragraph of the second column there. It says, "Arrest  
12 charges for new offenses occurring in the three years  
13 following handgun purchase were the outcomes of interest."

14 A. Yes.

15 Q. Okay. So, again, to the extent that any of these persons  
16 were committing violent acts but were never arrested, that  
17 wouldn't have been caught by this study; right?

18 A. That's correct. Of course, it's simply impossible to  
19 follow people and all of their violent things they do. So  
20 almost all studies that are going to be published are going to  
21 be based upon -- you know, at least that are looking at gun  
22 violence in these sort of studies are going to rely upon the  
23 available records.

24 Q. Of course.

25 And let's go to the next page. I'm sorry. Let's pull out

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1 the paragraph just above where it says "Discussion."

2 It says here, "We estimate that 12 percent of gun offense  
3 and 14 percent of violence offense arrests among handgun  
4 purchasers were attributable to the handgun purchase."

5 Did I read that correctly?

6 A. Yes.

7 Q. So, again, the math, not my strongest suit.

8 86 percent of violent offense arrests would not have been  
9 attributable to the handgun purchase?

10 A. Um, that's correct.

11 Q. And 88 percent of gun offenses are also not attributable  
12 to the handgun purchase?

13 A. Correct.

14 Q. And let's just look -- you looked at this already, but  
15 very briefly, that last paragraph in the -- very last  
16 paragraph on the page. I'm sorry.

17 Ms. Wright -- Dr. Wright and her coauthors state here, "We  
18 do not know whether those denied legal handgun purchase  
19 obtained a firearm by other means."

20 Did I read that correctly?

21 A. That's correct.

22 Q. A certain percentage of them did commit future gun crimes,  
23 though; correct? A certain percentage of those denied legal  
24 handgun purchases, nonetheless, committed future gun offenses?

25 A. That's correct.

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1 Q. Now, based on those two studies, it's your view that those  
2 studies are an indication that the denial of background checks  
3 lowers the population rates of violent crime; is that correct?

4 A. It lowers the rate for those who are denied.

5 Q. Yes. And I apologize if I said that badly.

6 Looking at a population, the people being denied as a  
7 result of background checks over the course of population will  
8 lower their rates of violent crime, the overall rates?

9 A. That's what these studies indicate.

10 Q. You don't have data specifically as to how denials of  
11 background checks impact mass shootings on a population level,  
12 do you?

13 A. No.

14 Q. You talked a little bit in your direct examination about  
15 the idea that persons might have a hesitancy to engage in  
16 transaction with firearms without somebody that they know and  
17 trust; correct?

18 A. That's correct.

19 Q. You mentioned some studies that you were involved in;  
20 correct?

21 A. Yes.

22 Q. Both of those studies that you were involved in were  
23 surveys done in Maryland?

24 A. Correct.

25 Q. One was a survey conducted in Baltimore; correct?

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1 A. Yes.

2 Q. And that was -- you mentioned on direct that that was a  
3 survey conducted of people on parole or probation; is that  
4 right?

5 A. That's right, yes.

6 Q. And the other was?

7 A. These were anonymous, just for what that's worth. So we  
8 wanted to make sure people were giving us honest information.

9 Q. The other survey was one conducted of youths in Maryland?

10 A. Yes, incarcerated youth.

11 Q. Incarcerated youths, that's right.

12 Now, Maryland has firearm regulations that go beyond  
13 federal law; correct?

14 A. Yes.

15 Q. Maryland requires all handgun sales, including private  
16 sales, to be contingent on the purchaser passing a background  
17 check?

18 A. Yes.

19 Q. And, actually, one of the studies you mentioned was  
20 actually looking at the effect of the 2013 Firearms Safety Act  
21 in Maryland; is that right?

22 A. That's right.

23 Q. That law required a permit to purchase for anyone  
24 purchasing a handgun, including in private sales. Yes?

25 A. Yes.

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1 Q. That statute banned assault rifles?

2 A. It did.

3 Q. It also limited magazine sizes to ten rounds?

4 A. That's correct.

5 Q. And it expanded authority for state police to act against  
6 gun dealers who were in violation of state gun laws; is that  
7 right?

8 A. That's right.

9 Q. Also in your declaration, you mentioned some studies that  
10 were done by Philip Cook; correct?

11 A. Yes.

12 Q. Those studies were done in Chicago?

13 A. Yes.

14 Q. Chicago has unusually restrictive firearm regulations;  
15 doesn't it?

16 A. Yes.

17 Q. In fact, in Illinois, all gun owners are required to have  
18 a Firearm Owner's ID Card; right?

19 A. That's correct.

20 Q. Private sales to persons without that card are illegal?

21 A. Yes.

22 Q. Chicago has actually essentially banned handguns; isn't  
23 that right?

24 A. In 2010, the Supreme Court said that they could not do  
25 that anymore. So, no, handguns are not banned in the city of

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1 Chicago, no.

2 Q. At the time that these studies were done, were handguns  
3 banned in Chicago?

4 A. Yes. The one in particular that I believe I cited.

5 There's been subsequent studies in Chicago, actually, led by  
6 Philip Cook, a slightly different method.

7 Q. The Chicago Police Department has made gun enforcement a  
8 priority since the 1950s; correct?

9 A. Yes.

10 Q. So the studies that support your statement -- your opinion  
11 that prohibited persons prefer to use a trusted source, those  
12 were done in areas with significant restrictive firearm  
13 regulations and enforcement; is that right?

14 A. Well, you could certainly say that about Chicago.

15 With respect to the Baltimore examples, actually, I have  
16 studied the frequency with which people are charged for  
17 violating the private background check requirement. And what  
18 we find is that it is extremely rare in the entire state of  
19 Maryland, but particularly in Baltimore city, that anyone is  
20 ever charged with that.

21 So there -- yes, there are requirements. But with respect  
22 to enforcing the private background check requirement, I would  
23 say that that is not something that is strictly enforced. So  
24 I felt that that's relevant to this conversation.

25 Q. You'd agree that regulations on gun sales have an impact

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1 on the illegal market; correct?

2 A. Yes, I do.

3 Q. Texas firearm regulations do not go beyond what is  
4 required by federal law; correct?

5 A. For the most part. And I don't have the full spectrum of  
6 their laws in front of me right now. But generally speaking,  
7 their laws are reasonably close to the federal laws.

8 Q. In Texas, private sales without a background check are  
9 legal?

10 A. Say that again, please.

11 Q. I'm sorry. In Texas, private sales done without a  
12 background check between private -- to private individuals are  
13 legal; is that correct?

14 A. You can legally do that, yes.

15 Q. You're aware that private sales occur at gun shows;  
16 correct?

17 A. Yes.

18 Q. You're aware that private sales occur on the internet;  
19 correct?

20 A. Yes.

21 Q. You're aware -- are you aware of the website Armslist?

22 A. Yes.

23 Q. That's a place where people can conduct private sales of  
24 firearms; correct?

25 A. Yes.



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1 Q. You don't know whether people who buy their firearms  
2 through websites like Armslist have some kind of preexisting  
3 trusted relationship with those sellers, do you?

4 A. I don't.

5 Q. And you actually -- you talked a little bit about Kelley  
6 being concerned about the risky, unpredictable, quote,  
7 underground gun market; is that right?

8 A. What I said is that it's quite likely that he did not want  
9 to go into that unregulated marketplace --

10 Q. Because it --

11 A. -- for the reasons I -- for the reasons I stated; that  
12 there's less control with respect to the quality of the  
13 firearms, whether they have been used in a crime or not, and  
14 personal safety reasons.

15 Q. Risky and unpredictable to use the private market;  
16 correct?

17 A. Yes.

18 Q. You don't -- you didn't cite any research in either your  
19 report or your declaration discussing the riskiness or  
20 unpredictability of private sales in Texas, did you?

21 A. No.

22 Q. You talked about a study, on direct, "Patterns of multiple  
23 family homicide." That was PEX 785.

24 A. Um-hum.

25 Q. You -- in discussing that study, you were talking about

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1 extended family members being killed; is that right?

2 A. Yes.

3 MS. KRIEGER: Let's look at page 10 of that study,  
4 the paragraph that starts -- second to the last paragraph, can  
5 you bring that out. Here we go. Sorry.

6 BY MS. KRIEGER:

7 Q. Looking in the middle of the paragraph, it says, "In cases  
8 in which the spouse and in-laws were killed, the spouse  
9 constituted the primary target. Here, the perpetrator  
10 perceived the in-laws as equally guilty of betrayal."

11 Did I read that correctly?

12 A. Yes.

13 Q. Again, these are cases in which both the spouse and the  
14 in-laws are killed, is that right, what's describes in that  
15 sentence?

16 A. Yes. Yes.

17 MS. KRIEGER: Let's look at page 12. And then  
18 there's a paragraph that starts "diffuse conflict." Here we  
19 go.

20 BY MS. KRIEGER:

21 Q. So this paragraph is talking about familicides involving  
22 relatives who are much more distantly related; correct?

23 A. Yes.

24 MS. KRIEGER: Highlight the sentence starting "Based  
25 on the available information." Keep going. There you go.

DANIEL WEBSTER – CROSS

1 BY MS. KRIEGER:

2 Q. I'm going to read the sentence.

3 "Based on the available information, it could be  
4 hypothesized that the more distant the family relation between  
5 victim and perpetrator, such as involving cousins, nephews,  
6 uncles and grandparents, the more likely the homicide  
7 resembles nonfamily homicides."

8 Did I read that correctly?

9 A. Yes.

10 MS. KRIEGER: Take that down.

11 BY MS. KRIEGER:

12 Q. You testified that you believed that the shooting was  
13 motivated by domestic violence; correct?

14 A. It was connected to domestic violence, yes.

15 Q. You actually were talking to Mr. Jacob about the -- when  
16 you first heard about this case, prior to being retained.

17 Do you remember that conversation?

18 A. Yes.

19 Q. You actually testified that before you were retained, when  
20 you first heard about this case, you had already determined  
21 that the motivation was domestic violence; is that right?

22 A. Based on the information that was available.

23 Q. That was before you viewed any of the documents that were  
24 provided to you specifically by plaintiffs' counsel in this  
25 case; correct?

DANIEL WEBSTER - CROSS

1 A. It was based on information that was coming up from news  
2 reports about the connections between Danielle Kelley's  
3 family, his history of domestic violence, and the importance  
4 of that church community to Danielle and her family.

5 Q. Um-hum. And we've spent some time already talking about  
6 whether Kelley was likely to purchase a gun from a non-FFL  
7 source. And I think you already mentioned this.

8 You are aware that Kelley bought a handgun from a friend;  
9 right?

10 A. Yes.

11 Q. And you're aware that he bartered for another shotgun --  
12 for a shotgun?

13 A. Yes.

14 Q. And I don't know if you were observing the testimony of  
15 Ranger Snyder.

16 Are you aware that Kelley sold a firearm to a pawn shop  
17 for which there's no 4473 on record?

18 A. Yes. Yeah. I mean, going into a pawn shop is not a  
19 particularly risky thing to do.

20 Q. Sure. He was actually selling that firearm; correct?

21 A. Right. That's correct.

22 Q. And the fact that there's no Form 4473 on record suggests  
23 that was also acquired from a non-FFL source?

24 MR. JACOB: Objection, Your Honor. Counsel is  
25 conflating the various firearms. The firearm -- the handgun

DANIEL WEBSTER - CROSS

1 that he got rid of was the handgun he sold.

2 THE COURT: So let's let the witness testify to what  
3 he knows.

4 THE WITNESS: I'm sorry. Could you please restate  
5 the question.

6 BY MS. KRIEGER:

7 Q. Were you aware that the firearm that was sold to the pawn  
8 shop, there's no 4473 form on record for that firearm?

9 A. No, I didn't know anything about that.

10 Q. I'm just going to ask you a couple questions about some of  
11 the things that you testified here.

12 You stated at one point that Kelley -- you were basing  
13 some of your opinions on the records of Kelley's involuntary  
14 hospitalization.

15 Are you aware that Kelley was actually voluntarily  
16 hospitalized?

17 A. Yeah. I misspoke. Sorry.

18 Q. And you also said that Kelley's father didn't trust Devin  
19 with firearms; is that correct?

20 A. Yes.

21 Q. Kelley's father allowed him to have firearms in his home;  
22 is that right?

23 A. Well, he didn't have -- allow him to access his own  
24 firearms -- I mean, Mr. Kelley's firearms.

25 Q. Sure. But Mr. Kelley didn't have any problems with

DANIEL WEBSTER - CROSS

1 Devin Kelley having -- possessing firearms within Mr. Kelley's  
2 house, having Devin's own firearms?

3 A. I don't think he was crazy about that. But, again, I  
4 don't necessarily want to speak to that. I mean --

5 Q. What are you basing the testimony -- what are you basing  
6 that statement on, that he wasn't crazy about Devin having  
7 firearms in the house?

8 A. Well, I just read testimony that he was concerned about  
9 firearms and his son.

10 Q. Mr. Kelley had his own firearms; right?

11 A. Yeah.

12 Q. He testified, I think, he had four firearms at one point?

13 A. Um-hum. Yes.

14 Q. And he also -- and his wife, Mrs. Kelley, testified that  
15 they had no idea that Kelley was prohibited from owning  
16 firearms; correct?

17 A. Yes.

18 Q. They testified that on at least one occasion, Devin Kelley  
19 cleaned one of his parents' guns.

20 Do you recall that testimony?

21 A. Yes.

22 Q. They also testified that Devin went shooting almost daily  
23 on the family property; correct?

24 A. Yes.

25 Q. There was no testimony that they ever asked Devin not to

DANIEL WEBSTER - CROSS

1 have firearms on the property; correct?

2 A. As far as I know, no.

3 Q. Let's go back to one of -- your own study. We looked at  
4 this a few minutes ago, the article from March 2020 called  
5 "Evidence concerning the regulation of firearms design, sale  
6 and carrying on fatal mass shootings in the USA," GEX 102.

7 A. Um-hum.

8 MS. KRIEGER: Can you pull up that research summary,  
9 just the whole gray box.

10 BY MS. KRIEGER:

11 Q. So in the summary, when it's providing a summary of the  
12 conclusions, it says, "Handgun purchaser licensing laws and  
13 bans of large-capacity magazines were associated with  
14 significant reduction in the incidence of fatal mass  
15 shootings." Correct?

16 A. Correct.

17 Q. And below that, it says, "Other laws commonly advocated as  
18 solutions to mass shootings - comprehensive background checks,  
19 assault weapons bans, and deregulation of civilian concealed  
20 carry of firearms - were unrelated to fatal mass shootings."  
21 Correct?

22 A. That's correct.

23 MS. KRIEGER: Let's turn to page 11. It says  
24 "Results." I want to say the second paragraph, but I'm  
25 actually not positive. Pull out that whole section.

DANIEL WEBSTER - CROSS

1 Yes, second paragraph.

2 BY MS. KRIEGER:

3 Q. Are you able to read that? Should we make it a little  
4 bigger?

5 A. No. I can read it.

6 Q. Okay. You concluded -- so I'm starting kind of partway --  
7 the first sentence of that second paragraph, you concluded,  
8 "The estimates from the full negative binomial models indicate  
9 that handgun purchaser licensing laws requiring in-person  
10 application with law enforcement or fingerprinting were  
11 associated with incidence of fatal mass shootings 56 percent  
12 lower than that of other states."

13 Did I read that correctly?

14 A. Yes.

15 Q. Texas does not have handgun purchaser license laws  
16 requiring in-person application with law enforcement or  
17 fingerprinting; is that correct?

18 A. That's correct.

19 Q. And then, same paragraph, you state, "For LCM bans" -- and  
20 just to be clear, "LCM bans," that's large-capacity magazine  
21 bans?

22 A. Correct.

23 Q. "For LCM bans, the IRR estimate indicates a 48 percent  
24 lower risk of fatal mass shootings associated with the  
25 policy."



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1 Did I read that correctly?

2 A. Yes.

3 Q. Texas does not have a large-capacity magazine ban;  
4 correct?

5 A. Correct.

6 Q. Colorado does have a large-capacity magazine ban; is that  
7 right?

8 A. That is correct.

9 Q. And Colorado's large-capacity magazine ban was in effect  
10 in 2016, was it not?

11 A. Yes.

12 Q. Next sentence, "We found no evidence that concealed carry  
13 laws, assault weapons bans, prohibitions for domestic abusers  
14 and violent misdemeanants or point of sale CBC laws were  
15 associated with the incidence of fatal mass shootings."

16 Did I read that correctly?

17 A. You did.

18 Q. "CBC laws" are comprehensive background check laws?

19 A. Yes.

20 MS. KRIEGER: Let's look at page 12. You can pull up  
21 the paragraph there. Just the whole thing.

22 BY MS. KRIEGER:

23 Q. There it says, "Models for the incidence of mass shootings  
24 with domestic or intimate partner violence links revealed no  
25 significant associations with laws prohibiting firearms for

DANIEL WEBSTER - CROSS

1 domestic violence abusers or violent misdemeanants or  
2 purchaser licensing laws."

3 Did I read that correctly?

4 A. Yes.

5 Q. The next sentence there, "LCM bans, however, were  
6 associated with a 61 percent lower rate of domestic mass  
7 shootings."

8 Is that correct? Did I read that correctly?

9 A. That is. You did.

10 MS. KRIEGER: Let's turn to page 17. It says, "The  
11 findings of this study." Second -- yeah.

12 BY MS. KRIEGER:

13 Q. You state, "The findings of this study suggest that the  
14 most common policy prescriptions offered by advocates on each  
15 side of the debate over gun control - comprehensive background  
16 checks, and assault weapons bans on one side and so-called  
17 'right to carry' laws reducing restrictions on civilian  
18 concealed carry of firearms on the other side - do not seem to  
19 be associated with the incidence of fatal mass shootings."

20 Is that correct?

21 A. Yes.

22 Q. Continuing on, you state, "28 percent of the shootings in  
23 this study had some connection to domestic violence, yet we  
24 found no evidence that laws designed to keep firearms from  
25 perpetrators of domestic violence have affected mass shootings

DANIEL WEBSTER - REDIRECT

1 connected to domestic violence."

2 Did I read that correctly?

3 A. Yes.

4 Q. You would agree there are always some people who -- if  
5 they have the resources, the determination, and the ability,  
6 there are always some people who are going to get a firearm;  
7 is that right?

8 A. Yes.

9 MS. KRIEGER: Pass the witness.

10 THE COURT: Any redirect?

11 MR. JACOB: Yes, Your Honor.

12 May I proceed Your Honor?

13 THE COURT: Yes.

14 REDIRECT EXAMINATION

15 BY MR. JACOB:

16 Q. Dr. Webster, I want to start with that study, and I'll  
17 give an opportunity for the tech -- can you hear me okay?

18 A. Yeah.

19 Q. Okay. Let me start with GEX 102, and I'm going to display  
20 GEX 102 for you.

21 And this is the study that you were just discussing with  
22 Ms. Krieger; is that correct?

23 A. That's right.

24 Q. Dr. Webster, does GEX 102 answer any question that is at  
25 issue in this case?

## DANIEL WEBSTER - REDIRECT

1 A. Well, what I think it does is it examines broad policies  
2 and their impact across populations within the states. The  
3 nature of the data that we had to examine — pardon me.

4 We couldn't — we could not, in essence, assess which  
5 individuals were prohibited or not. These were broad —  
6 again, broad correlational studies looking at the presence of  
7 certain firearm laws and population rates.

8 Q. The government — in this study, Government Exhibit 102  
9 discusses comprehensive background checks.

10 Is a comprehensive background check different than the  
11 status quo, the federal system that we're discussing here?

12 A. Yeah. It's different, principally, in the sense that  
13 private transfers are required to proceed only if the  
14 purchaser or transferee has passed a background check.

15 Now, I think it's important to understand what we were  
16 examining here. We were examining whether that policy change  
17 of extending the background check requirement to private  
18 transfers, in addition to transfers from licensed dealers,  
19 impacts fatal mass shootings. We found it did not.

20 Research that I have cited in — I believe, in my second  
21 declaration, points out that in studies that I've coauthored,  
22 we find actually no significant increase in the number of  
23 background checks after these requirements are put into place,  
24 which brings it in what I was describing earlier about the  
25 case in Maryland where these — sadly, these are types of laws

DANIEL WEBSTER - REDIRECT

1 that for private individuals, law enforcement seems very  
2 reluctant to investigate and bring charges against as opposed  
3 to federally licensed firearm dealers.

4 Q. Okay. And just so I understand the specific data that  
5 you're comparing when you reach conclusions in Government  
6 Exhibit 102, such as the effectiveness of comprehensive  
7 background searches -- search laws, are you comparing  
8 basically two groups or two sets of data, one set of data  
9 being the effectiveness of comprehensive -- extending the  
10 background check to private sales in contrast to just -- in  
11 contrast to data that does not extend the background check to  
12 private sales?

13 A. Yeah, exactly. We're contrasting changes that occur in  
14 response to this extension to background checks for private  
15 sellers and whether the trends change differentially in those  
16 states versus states that don't extend their background check  
17 requirement to private transfers.

18 Q. So is it --

19 A. So we find no clear correlation between extending -- the  
20 law extending requirements to private sellers and the  
21 incidence of fatal mass shootings.

22 Q. And let's take a look at some of the reasons why that may  
23 be.

24 If we can look at Plaintiffs' Exhibit 765, the Wintemute  
25 article that was covered by Ms. Krieger as well.

## DANIEL WEBSTER - REDIRECT

1       You recognize this article; right?

2   A.   Yes.

3   Q.   And I want to take you to page 4 of the Wintemute article,  
4   Plaintiffs' Exhibit 765, and just zoom in on the first  
5   paragraph that says, "Incomplete data due to failed  
6   reporting."

7   A.   Yes.

8   Q.   Can you explain to us what this summary article is  
9   describing about the literature in the field?

10   A.   Yeah. What Dr. Wintemute was doing here is really  
11   breaking down a far more detailed understanding of background  
12   checks and research relevant to background checks -- so what  
13   we can and cannot conclude -- and also identifying, in  
14   essence, how one might get better outcomes from background  
15   check requirements.

16       And one of the things Dr. Wintemute focuses on,  
17   particularly, in this article, is completeness of the records.

18   Q.   And how does incomplete records affect the studies and the  
19   research done on background check systems?

20   A.   Well, incompleteness of records would reduce the impact of  
21   background check requirements by people applying to purchase  
22   firearms who are prohibited but are given a green light to go  
23   forward because those records aren't in there. And many of  
24   the studies that actually I've coauthored with Dr. Wintemute  
25   are studies that were done examining law changes in the 1990s,

## DANIEL WEBSTER - REDIRECT

1 principally, at a time when the records were far less complete  
2 than they are now.

3 So that's one reason why we are continuing research to  
4 look at more recent adoption of these laws because this is  
5 getting better. The completeness of records are improving  
6 over time.

7 Q. And from what you've learned in your research and in this  
8 case, is the federal government responsible for some of the  
9 incompleteness of the records that you're seeing in the  
10 background check system?

11 A. Yes, they are, including the Department of Defense.

12 Q. And is AFOSI, in particular, responsible for at least  
13 7,300 records not being reported to NICS?

14 A. That's correct.

15 Q. Let me show you Plaintiffs' -- or Exhibit 750.

16 And do you recognize PEX 750 as an article that you  
17 discussed with Ms. Krieger?

18 A. That's right, yes.

19 Q. And I want to zoom in to the policy implication section  
20 of -- well, first, tell us what PEX 750 is trying to do, the  
21 article itself.

22 A. Yeah. It's trying to -- it's summarizing data relevant to  
23 the degree to which domestic violence has -- is connected to  
24 fatal mass shootings.

25 And as the title implies, might there be opportunities to

DANIEL WEBSTER - REDIRECT

1 prevent these types of acts that are -- have this nexus  
2 between domestic violence and fatal mass shootings.

3 Q. And I want to zoom in on policy implications, and have you  
4 read the policy implications into the record for us.

5 A. Sure. "Implementation of domestic violence firearm  
6 restrictions may prevent access to firearms for some  
7 potential" -- "some potential mass shooters. For this to  
8 happen, domestic violence cases need to become known to and  
9 move through the justice system to conviction or granting a  
10 domestic violence restraining order, and the firearms  
11 restrictions need to be effectively implemented."

12 And this is really important in studies, that actually  
13 I've done with Dr. Zeoli, that show that how comprehensive the  
14 restraining orders are, and whether there's actual  
15 requirements to surrender the firearms actually matter in  
16 terms of their impact on domestic homicides.

17 Q. And when it says "firearms restrictions need to be  
18 effectively implemented," does that include the need for  
19 governmental agencies like AFOSI and security forces to submit  
20 criminal history to the FBI?

21 A. Yes, that's certainly part of it.

22 Q. Okay. Let me show you the last page of this article. So  
23 you should -- you should be looking at page 15 -- sorry,  
24 page 15 of PEX 750. And if we can highlight just the first  
25 section of under "Conclusion" so we can see it, including the



## DANIEL WEBSTER - REDIRECT

1 word "Conclusion" so you're able to read that.

2 A. Okay.

3 Q. Can you read into the record the first three sentences of  
4 the conclusion?

5 A. Yes. "Domestic violence firearm restrictions are  
6 considered promising tools to prevent mass shootings because  
7 of the perception that mass shooters typically have histories  
8 of committing domestic violence. Through this analysis, we  
9 found that more than 30 percent of mass shooters had these  
10 histories.

11 "It is clear that domestic violence firearm restrictions  
12 will only prevent mass shootings if high-risk individuals  
13 obtain restrictions through criminal convictions or domestic  
14 violence restraining orders and have those restrictions  
15 enforced."

16 Q. So I guess two points here.

17 First, is the figure that Zeoli -- in this article, PEX  
18 750 -- that 30 percent of mass shooters have history of  
19 domestic violence, is that an accurate figure based on your  
20 survey of all the literature in the field?

21 A. That's certainly consistent with it. I mean, this  
22 particular study that Dr. Zeoli led was, I think, the most  
23 recent comprehensive study to pull this data together.

24 Q. And when it says "it is clear that domestic violence  
25 firearm restrictions will only prevent mass shootings if

## DANIEL WEBSTER - REDIRECT

1 high-risk individuals obtain restrictions through criminal  
2 convictions," does that include the conviction and submission  
3 of that conviction information to the FBI's NICS system?

4 A. Yes.

5 Q. I want to go to one last article, PEX 785. And I'll go to  
6 page 2 of PEX 785.

7 Do you remember discussing patterns of multifamily  
8 homicide with Ms. Krieger?

9 A. Yes.

10 Q. And I believe y'all discussed page 10 of PEX 785, and if I  
11 can show you the paragraph, in particular, that y'all  
12 discussed on page 10 of 785.

13 We'll zoom in to that paragraph that starts with  
14 "Cluster 4."

15 A. Okay.

16 Q. Okay. And I think the sentence that Ms. Krieger talked to  
17 you about was "In cases in which the spouse and in-laws were  
18 killed, the spouse constituted the primary target. Here the  
19 perpetrator perceived in-laws as equally guilty of betrayal."

20 Did I read that correctly?

21 A. Yes.

22 Q. Could you read the last sentence of this paragraph,  
23 starting with "typically."

24 A. Oh, yes. "Typically, the victims and perpetrator did not  
25 share a household. The event was premeditated in about

## DANIEL WEBSTER - REDIRECT

1 two-thirds of the cases."

2 Q. And with this in mind, I want to ask you a couple of  
3 questions.

4 If this were not -- if the Sutherland Springs shooting  
5 were not in some way connected to domestic violence, do you  
6 have any evidence or knowledge as to why Devin Kelley would  
7 hogtie Danielle Shields before leaving to shoot up the church?

8 MS. KRIEGER: Objection. Calls for speculation.

9 THE COURT: Yeah, I don't see how he can answer that  
10 this question. How is that within his realm of expertise?

11 MR. JACOB: Well, the point is that there would be no  
12 other explanation, Your Honor.

13 MS. KRIEGER: Your Honor, I could think of plenty of  
14 other explanations, but I'm not testifying.

15 THE COURT: That's sustained.

16 BY MR. JACOB:

17 Q. Now, this article talks about the spouse being a target.  
18 I want to show you the part of the trial transcript from  
19 Danielle Kelley's testimony, day one.

20 And if I can pull up page 107 of the transcript from the  
21 first day of trial and show that to you. And I want to just  
22 highlight line 17 through 22 of Danielle Smith's testimony for  
23 you.

24 This is where Ms. Smith is discussing how Devin Kelley  
25 hogtied her before leaving for the Sutherland Springs

## DANIEL WEBSTER - RECROSS

1 shooting.

2 Do you see that?

3 A. I'm reading.

4 Okay. Yes.

5 Q. And based on Ms. Smith's testimony, is it your  
6 understanding that Devin Kelley told their son that he would  
7 be back after the Sutherland Springs shooting?

8 A. Yes.

9 Q. And do you know why he would be back?

10 MS. KRIEGER: Objection. Calls for speculation.

11 THE COURT: That's sustained.

12 MR. JACOB: I'll withdraw, Your Honor, and pass the  
13 witness.

14 THE COURT: Anything further?

15 MS. KRIEGER: Just two things.

16 RECROSS-EXAMINATION

17 BY MS. KRIEGER:

18 Q. Sorry. Turning back to GEX 102, page 17 again.

19 Mr. Jacob asked you -- and I don't even need the page --  
20 Mr. Jacob asked you whether this study answered any questions  
21 that are relevant to this case.

22 Now, you found on -- page 17, you stated, "28 percent of  
23 the shootings in this study had some connection to domestic  
24 violence, yet we found no evidence that laws designed to keep  
25 firearms from perpetrators of domestic violence have affected

## DANIEL WEBSTER - RECROSS

1 mass shootings connected to domestic violence."

2 I read that correctly; right?

3 A. Yeah.

4 But the audio right now is not great, so I'm sorry.

5 Q. I apologize. That's my fault. I muted my microphone.

6 Do you want me to read that again, or did you -- you got  
7 it?

8 A. No, that's fine. I think I got it, but I just wanted to  
9 make sure I was hearing you.

10 MS. KRIEGER: Did the court reporter get that? I  
11 think I was on the microphone.

12 THE REPORTER: Yes.

13 BY MS. KRIEGER:

14 Q. And then just very briefly, do you know what percentage of  
15 people who commit domestic violence go on to commit mass  
16 shootings?

17 A. No, I don't.

18 MS. KRIEGER: If we could pull up PEX 750, page 15  
19 one more time, and that last paragraph above "Conclusions"  
20 again.

21 BY MS. KRIEGER:

22 Q. Dr. Zeoli states there, "Certainly only a small fraction  
23 of individuals who commit domestic violence will conceive of,  
24 plan, or commit a mass shooting." Is that correct?

25 A. Yeah, that's correct. I mean, domestic violence is very

DANIEL WEBSTER – FURTHER REDIRECT EXAMINATION

1 common; mass shootings aren't.

2 MS. KRIEGER: No further questions.

3 THE COURT: Anything else?

4 MR. JACOB: Yes, Your Honor briefly.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. JACOB:

7 Q. Back to GEX 102.

8 When the -- when the article, GEX 102, says, "Laws  
9 designed to keep firearms away from perpetrators," is that  
10 referring to, for example, the comprehensive background check  
11 system that we discussed in your redirect examination  
12 previously?

13 A. It certainly includes it, yes.

14 Q. So, again, is this referring to the difference between the  
15 comprehensive background search system versus the status quo  
16 federal system, which we are here discussing today?

17 A. Yeah. That's what this article examines as it relates to  
18 comprehensive background checks. We also look at other  
19 firearm policies as well.

20 Q. So would another way of stating that sentence be "Laws  
21 extending background checks to private sales have" -- let me  
22 read the exact language.

23 "Laws extending background checks to private sales have  
24 demonstrate" -- one second. Let me...

25 Okay. So another way -- would another way of stating that

## DANIEL WEBSTER - FURTHER RECROSS-EXAMINATION

1 be "Laws extending background checks to private sales have no  
2 effect on mass shootings"?

3 A. Yes.

4 MR. JACOB: Pass the witness, Your Honor.

5 MS. KRIEGER: I'm sorry. I just have one or two  
6 questions.

7 FURTHER RECROSS-EXAMINATION

8 BY MS. KRIEGER:

9 Q. Looking at GEX 102, looking at page 12, just pull out that  
10 first paragraph.

11 It says, "Models for the incidence of mass shootings with  
12 domestic or intimate partner violence links revealed no  
13 significant associations with laws prohibiting firearms for  
14 domestic violence abusers or violent misdemeanants or  
15 purchaser licensing laws. Table 4."

16 Is that correct?

17 A. Yes.

18 MS. KRIEGER: Looking at table -- that's Table 2. I  
19 apologize. Looking at Table 4, which is on page 15.

20 Never mind. No further questions.

21 But, Your Honor, the United States would request that  
22 the documents cited by Dr. Webster in his testimony be moved  
23 into evidence. He read from them, but none of them have  
24 actually been moved in.

25 MR. JACOB: Your Honor, the learned treatise rule

## DANIEL WEBSTER - FURTHER RECROSS-EXAMINATION

1 expressly prohibits the entrance of learned treatises into  
2 evidence. They can only be read into the record, not entered  
3 into evidence.

4 MS. KRIEGER: Your Honor, this is a bench trial. We  
5 believe that these documents would be helpful to you.

6 THE COURT: So give me specifics. What numbers are  
7 we talking about?

8 MS. KRIEGER: Let's see. PEX 782, PEX 765,  
9 PEX 750 -- I have kind after long list -- PEX 754, 759,  
10 PEX 763, PEX 761, certainly Government Exhibit 102, PEX 757,  
11 PEX -- did I say 753? No. 753. PEX 788, PEX 786, and  
12 PEX 787, as well as, I think, PEX 785.

13 THE COURT: So...

14 MS. KRIEGER: If there are others that plaintiffs'  
15 counsel -- those are the ones on my list. If there are others  
16 that plaintiffs' counsel would like to move in, we would not  
17 object to that.

18 THE COURT: So these were all initially offered by  
19 the plaintiffs, and now you don't want them admitted?

20 MR. JACOB: Well, Your Honor, we were offering them  
21 under the learned treatise rule, which expressly says that, if  
22 admitted, the statement may be read into evidence but not  
23 received as an exhibit.

24 If Your Honor is going to take this into evidence, I  
25 ask that you allow us an opportunity to review specifically



## DANIEL WEBSTER - FURTHER RECROSS-EXAMINATION

1 what documents after we receive the transcript and then make  
2 that offer tomorrow.

3 THE COURT: Yeah, I'll take that under consideration.  
4 I want to review again the learned evidence rule and find out  
5 what the exceptions may be.

6 But, Dr. Webster, I do have a question for you.

7 Can you go back to where the government was on  
8 page 12 just a moment ago.

9 MS. KRIEGER: Of GEX 102?

10 THE COURT: Yes. So I think it was page 12 that you  
11 were at earlier.

12 MS. KRIEGER: Yes.

13 THE COURT: If you can pull out that language there.  
14 There we go.

15 So, Doctor, to sort of summarize your testimony, I  
16 want to make sure I understand here.

17 So big picture, what I walked away from was that  
18 you're opining that extending background checks to non-FFLs  
19 doesn't have any kind of correlation between diminishing acts  
20 of violence or mass violence; is that correct?

21 THE WITNESS: That's correct. In this case, we're  
22 focused on fatal mass shootings.

23 THE COURT: Okay. However, on this page, with regard  
24 to domestic violence, you seem to opine that these models for  
25 incidence of mass shootings with domestic violence or intimate

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1 partner violence links revealed no significant associations  
2 with laws prohibiting firearms or purchaser licensing laws.

3 How do I reconcile that statement that's highlighted  
4 right now with an earlier statement that you opined that  
5 domestic violence firearm restrictions will only prevent mass  
6 shootings if restrictions are enforced?

7 How are those two statements reconciled, or can they  
8 be?

9 THE WITNESS: Well, in the case of the domestic  
10 violence prohibitors, the information needs to get into the  
11 NICS system for them to work, basically. And what we've found  
12 and what Dr. Wintemute in his article goes into -- but other  
13 studies examined this more specifically; in particular, as it  
14 relates to domestic violence.

15 Because a lot of the records, for example, might have  
16 a conviction for aggravated assault, but it is not specific  
17 enough to say whether or not it was domestic violence.  
18 Restraining order records, sadly, over the years have not  
19 always been submitted to the systems.

20 So I think the way I reconciled this is that for  
21 these very specific domestic violence prohibitors to be  
22 impactful, that they require the full reporting of the  
23 records.

24 THE COURT: So I just want to make sure what your  
25 opinions are.

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1 THE WITNESS: Um-hum.

2 THE COURT: Do I understand you correctly that you're  
3 saying that if an act of domestic violence should put somebody  
4 on the restriction list and the restriction list is reported,  
5 there's a decrease in violence in the future, but just  
6 domestic violence incidence, without any kind of triggering,  
7 doesn't do anything?

8 Is that what I'm walking away with from your  
9 testimony?

10 THE WITNESS: Well, I want to be specific about  
11 what's in this study. And then, you know, there are separate  
12 ways to think about this general question.

13 So in other studies, we've found -- that I've done  
14 with April Zeoli, for example -- we found that domestic  
15 violence restraining orders, and laws that restrict firearms  
16 connected to those restraining orders, and firearm laws that  
17 prohibit based upon violent misdemeanors result in significant  
18 reductions in intimate partner homicide.

19 We did not see that in the case of mass shootings.  
20 We're talking about a much smaller sample size to examine this  
21 rather than for overall intimate partner homicides.

22 And so we also, in our prior work, didn't see as  
23 strong a relationship to the domestic violence offenses as --  
24 rather than the broader category of violent convictions for  
25 violent crimes. And, again, I think that has to do with a

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1 combination of the incidence not being categorized as domestic  
2 violence, as well as the fact that convictions don't happen as  
3 frequently because victims don't want to press those charges  
4 and so on.

5 So it's sort of a complicated set of factors involved  
6 as they relate very specific to offenses that are in the  
7 records as domestic violence prohibitors.

8 THE COURT: Any questions based on my questions?

9 MR. JACOB: No, Your Honor.

10 MS. KRIEGER: Just one, Your Honor.

11 FURTHER RECROSS-EXAMINATION

12 BY MS. KRIEGER:

13 Q. Dr. Webster, this study, GEX 102, it doesn't state that  
14 the reason that laws designed to keep firearms from  
15 perpetrators of domestic violence has -- that no effect was  
16 seen on mass shootings based on those laws, the study doesn't  
17 state that the reason for that is because these incidents are  
18 not reported; is that correct?

19 A. Well, what we're looking at here is just the results.  
20 You're presenting the results.

21 Q. Right. The study doesn't actually --

22 A. So --

23 Q. -- give an explanation for that; is that right?

24 A. Well, we don't have the access to all the records to say  
25 precisely what is going on in each of these cases.

1 Q. Um-hum.

2 A. But as we have discussed, it's well documented that there  
3 are problems in the records upon which the background check  
4 systems are based and the firearm prohibitors are based.

5 Q. Well, you actually -- can we just pull up page 17 again.

6 I think this is actually something that you just testified  
7 to. You state -- sorry. Pull up that second-to-last  
8 paragraph.

9 You state that -- the last sentence, it's actually  
10 surprising that there's no evidence that this affects mass  
11 shooters because there is evidence that laws prohibiting  
12 persons under these types of -- these types of laws are  
13 associated with reduced intimate partner homicides; correct?

14 A. That's correct.

15 MS. KRIEGER: That's all. Thank you.

16 THE COURT: Any further need for this witness?

17 MR. JACOB: No, Your Honor.

18 THE COURT: May he be excused?

19 MS. KRIEGER: Yes, Your Honor.

20 THE COURT: Thank you, Dr. Webster.

21 THE WITNESS: Thanks.

22 THE COURT: So let's go over the schedule for the  
23 rest of the week here before we adjourn for the day.

24 So the only conflict that I have is on Friday. At  
25 1:00, the judges of the Western District are meeting to

1 discuss a couple of those issues, and I would like to be  
2 present. One of the discussions is going to be a potential  
3 relocation of one of our posts to another division. So it's  
4 going to be an interesting discussion, and I'd like to be  
5 present for that.

6 So how do we keep us on track? We've got two  
7 witnesses for tomorrow, Ryan and Barborini?

8 MR. ALSAFFAR: Yes, the defense witnesses, Your  
9 Honor. That's my understanding.

10 THE COURT: Yeah. And then Wednesday, we only have  
11 one. I mean, is there a possibility we can move everybody up  
12 one, and that way we only have one witness for Friday morning?  
13 Would that work?

14 MR. STERN: The problem, Your Honor, is that we  
15 already issued the witness subpoena for Erin Higgins for  
16 Thursday, and we would like our experts, Drs. Fox and  
17 Dr. Bursztajn, to watch that testimony before they give their  
18 own testimony.

19 THE COURT: Okay.

20 MR. ALSAFFAR: Your Honor, they can still do that,  
21 actually. If they go Higgins on Wednesday, Bursztajn and Fox  
22 would follow Higgins on Thursday.

23 MR. STERN: We don't think we're going to get to both  
24 of them on Thursday.

25 THE COURT: Okay. So what we'll do -- that's fine.

1 I'm just trying to do my planning.

2 So I, over an abundance of precaution, am thinking  
3 that we may not finish by the 16th. We can still do closing  
4 arguments perhaps on Monday the 19th. And if necessary, I've  
5 got the 20th still free, so if, for some reason, we have to  
6 push over.

7 Let's plan on this, then. Let's plan that we're only  
8 going to be working Friday morning, and we'll recess at about  
9 12:55 for me to get to that meeting. So you can plan  
10 accordingly for that.

11 With that, does the plaintiffs rest?

12 MR. ALSAFFAR: Your Honor, we have a rebuttal  
13 witness, Dr. Metzner, who will be coming after their last  
14 witness.

15 THE COURT: Okay.

16 MR. ALSAFFAR: And so I think what I'm hearing, Your  
17 Honor, is that the government will not have a witness  
18 Wednesday afternoon, so that we'll just do two on Thursday and  
19 then their final witness on Friday morning, which would mean,  
20 with your break, we would do Metzner, our rebuttal witness, on  
21 Monday and then perhaps close Monday afternoon.

22 Does that sound --

23 MR. STERN: Originally, you talked about Metzner  
24 going Friday morning, but we are kicking him to Monday now?

25 MR. ALSAFFAR: Because the judge cannot go past

1 12:55.

2 MR. STERN: Exactly. Fox, Friday morning; Metzner,  
3 Monday morning?

4 MR. ALSAFFAR: That's right, yes.

5 MR. STERN: I think we're all right.

6 THE COURT: Let's plan accordingly, then.

7 MR. STERN: Your Honor, there's one other thing.

8 THE COURT: Shall we -- well, the rest of those  
9 watching these proceedings, we are finished with testimony for  
10 today. We are just merely doing housekeeping matters. You're  
11 welcome to remain online, or you can drop if you wish.

12 MR. STERN: Your Honor, technically, it's not a  
13 housekeeping matter, but that's up to you. Sorry.

14 THE COURT: Oh. Well, we won't be hearing any  
15 testimony. You're welcome to remain on if you'd like.

16 So what we do have?

17 MR. STERN: As the plaintiffs have just closed their  
18 case in chief the United States would seek judgment on partial  
19 findings pursuant to Federal Rule of Civil Procedure 52(c).

20 Now, admittedly, several of these grounds are issues  
21 that the Court has already adjudicated, and so the United  
22 States is happy to file a formal motion. But, of course,  
23 considering there's been about 400-plus entries in the docket  
24 already, I don't want to clog the Court's dockets.

25 So I can either read the grounds into the record



1 right now or proceed however Your Honor wants.

2 THE COURT: Why don't you read them into the record  
3 right now.

4 MR. STERN: Fair enough.

5 Your Honor, the United States seeks motion on partial  
6 findings pursuant to Federal Rule of Civil Procedure 52(c) on  
7 five grounds.

8 The first, the United States is immune from suit  
9 under the Brady Act immunity provision, 18 USC 922(t)(6).

10 Second, the United States is immune from suit under  
11 the FTCA misrepresentation exception, 28 USC 2680(h).

12 Three, the United States is immune from suit because  
13 the Federal Tort Claims Act creates no causes of action for  
14 violations of federal statutes or regulations pursuant to  
15 *Johnson v. Sawyer*, 47 F.3d 716, from 1985 from the Fifth  
16 Circuit.

17 Fourth, under Texas law, a private person would not  
18 be held liable to these plaintiffs in similar circumstances,  
19 and the United States, therefore, do not owe a duty of care in  
20 this case.

21 And, five, plaintiffs have failed to prove the United  
22 States was the proximate cause of their injuries.

23 THE COURT: Any response?

24 MR. ALSAFFAR: Well, Your Honor, I think we've  
25 litigated every single one of those already extensively, so we

1 would refer to our filings. And we'd also refer to the 20  
2 depositions that have been preadmitted as part of the trial.  
3 It's easy to forget those. All of those establish the Brady  
4 immunity doesn't apply and reinforces the Court's initial  
5 decision.

6 And in terms of the FTCA state law, the motion and --  
7 that -- again, Your Honor, that's a matter of law. I don't  
8 think we need to discuss that right now. That doesn't relate  
9 to the trial facts.

10 And then the last one, proximate cause, Your Honor,  
11 we've obviously put on extensive evidence that the government  
12 was both aware causally and factually that this particular  
13 plaintiff -- I'm sorry, this particular shooter had a very  
14 specific and particular preference for these kinds of weapons  
15 that he specifically used in this shooting. They really  
16 presented no evidence to the contrary on that, other than  
17 speculation.

18 And then on the second part, foreseeability, which I  
19 assume is part of the proximate cause analysis, without going  
20 into the extensive detailed records we've admitted into  
21 evidence, it's safe to say that the Air Force knew more than  
22 anybody else in Devin Kelley's life that this was a deeply  
23 depraved, mentally unstable man who had extensive violence  
24 that the Air Force knew more about than any other person in  
25 his life. And that included sexual violence, physical

1 violence, domestic violence. And now we know more than we  
2 knew before, extensive threats of mass shooting violence.

3 And that clears the foreseeability bar quite clearly.

4 MR. STERN: Your Honor?

5 THE COURT: Go ahead.

6 MR. STERN: The plaintiffs got to make some argument.  
7 Am I allowed to do the same briefly?

8 THE COURT: Sure.

9 MR. STERN: With regard to the Brady Act immunity  
10 provision, I understand that this has been briefed  
11 extensively. However, Your Honor has still yet to rule as --  
12 how *Maroney* [phonetic] applies in this case. Because if you  
13 recall, *Maroney* actually is a case whereby an employer, under  
14 Texas law, was allowed to use the immunity provided by its  
15 employee under federal statute.

16 And this is the same exact case we have here, that  
17 under Texas law, an employer can get the benefit of a federal  
18 immunity given to its employee.

19 Therefore, even if Your Honor reads 922(t)(6) as  
20 allowing immunity to United States employees, then under  
21 respondeat superior liability pursuant to the Federal Tort  
22 Claims Act, the United States gets the benefit of immunities  
23 given to its employees not only pursuant to state law under  
24 *Alfonso* case, but those immunities provided by federal law  
25 under the *Maroney* case.

1 And that has still not been adjudicated by the Court,  
2 how it reconciles the *Maroney* decision. When it comes to --

3 MR. ALSAFFAR: Your Honor?

4 MR. STERN: Hold on.

5 MR. ALSAFFAR: I thought you were finished.

6 MR. STERN: I'm going to keep going, if you don't  
7 mind.

8 Let's start with Number 2, the misrepresentation  
9 exception. This has been briefed as well. However, to the  
10 extent that the plaintiffs are arguing that the Air Force  
11 failed to provide information to NICS, then that was a  
12 misrepresentation by the Air Force. Or if they are arguing  
13 that the NICS system provided a proceed to the FFL rather than  
14 what should have been denial, that is a misrepresentation too.

15 So under either communication that's at issue in this  
16 case, it is barred under the misrepresentation exception under  
17 28 USC 2680 (h) .

18 Three, with regards to *Johnson v. Sawyer*, the United  
19 States has to be clear and somewhat careful because I know  
20 Your Honor has already ruled on this issue.

21 But the United States maintains that *Johnson v.*  
22 *Sawyer* is very clear that, under FTCA law, the tort or the  
23 duty cannot be based on federal statutory duties.

24 And, Your Honor, with due deference, the notion that  
25 this case is not predicated on federal statutory duties but

1 the operation of a bureaucratic system pursuant to those  
2 federal statutory duties is a distinction without a  
3 difference.

4 Plaintiffs can always circumvent *Johnson v. Sawyer* by  
5 saying "No, no, no, it's not the Brady Act, but it's the  
6 operation of NICS. It's not the Crime Reporting Act, but it's  
7 the operation of interstate identification index. It's not  
8 the Patriot Act, but it's the implementation of a terrorist  
9 watch list."

10 Under all of those circumstances, *Johnson v. Sawyer*  
11 can always be circumvented by saying it's not federal law, but  
12 it's the intergovernmental reporting obligations pursuant to  
13 that federal law.

14 And that's why under even the restatement of torts  
15 323 and 324A, you need a negligent undertaking that is a  
16 service-rendered, quote/unquote, to another. And here, this  
17 is not a duty rendered to these plaintiffs; it is provided to  
18 the general public.

19 And I remember when we were arguing the motion to  
20 dismiss, and it was our deputy assistant attorney general who  
21 argued this was arguably a responsibility to the general  
22 public for all Americans. And the next sentence should have  
23 been "a duty to all is a duty to none." That is black letter  
24 law both in Texas tort law and throughout this country that  
25 without some type of tethering to these plaintiffs, then this

1 is just simply a bureaucratic enterprise for which the United  
2 States cannot be held liable.

3 With regards to four, no private person analogue,  
4 simply because Texas recognizes the doctrine of negligent  
5 undertaking, it does not mean that the plaintiffs have found a  
6 private person analogue.

7 Here, the most analogous case is *Perry versus S.N.*  
8 And Your Honor already recognized that there was no common law  
9 duty under that case. Frankly, Your Honor, that should have  
10 ended this case two years ago. *Perry v. SN* is the most  
11 analogous case to the case at bar.

12 And as a result, plaintiffs cannot show a common law  
13 duty for which a private party would be held liable. And so  
14 the United States, likewise, in similar circumstances, must be  
15 dismissed from this case.

16 And, five, I want to be very clear because, yes, of  
17 course, when we're talking about proximate cause, we're  
18 talking about two factors; foreseeability and cause-in-fact.

19 Foreseeability, we only look at what which gave rise  
20 to the alleged duty. And I want to be clear with the word  
21 "alleged." Because when we're talking about proximate cause  
22 we are talking about whether the breach of a duty proximately  
23 caused the injuries.

24 So what was the alleged duty? Here, it is only  
25 predicated on 18 USC (g) (1) and (g) (9), the two specifications

1 that gave rise to any reporting obligation by the Air Force.  
2 As a result, that is the only conduct of Devin Kelley's that  
3 can even be considered by the Court as to whether or not there  
4 was a duty, a breach, and whether the breach of that duty  
5 caused plaintiffs' injuries.

6 And as a result, if you're looking at foreseeability,  
7 which means whether the mass shooting was of the same general  
8 character as that which occurred when Devin Kelley was in the  
9 Air Force, the answer is categorically no.

10 The assault that he did, while it was brutal on Tessa  
11 Kelley and his stepson, is so different in kind in both  
12 severity and in character to one of the most deadly mass  
13 shootings in the United States that, on its face, it cannot go  
14 forward, and the case must be dismissed because it was not  
15 foreseeable to the Air Force that five years later or any time  
16 period later that Devin Kelley would commit this heinous act.

17 And when it comes to cause-in-fact, Your Honor has  
18 heard testimony regarding the numerous instances where Kelley  
19 obtained firearms from non-FFLs, his determination, his  
20 motivation, the fact that this person was not deterred by  
21 laws, was not deterred by physical barriers as he jumped a  
22 fence to elope from Peak to obtain firearms he had researched  
23 online, the fact that he broke the laws time and time again,  
24 that he was planning days in advance, that he had a black box  
25 where he was concealing his true intent, including putting on

1 that "Punisher" mask and doing what he did.

2 Your Honor, it is very clear that no laws, certainly  
3 no background checks that are limited by law that Congress has  
4 limited only to FFLs when everyone knows, that you can easily  
5 obtain firearms in Texas through non-FFLs. Ranger Snyder said  
6 as much, that other individuals recognize Kelley researched  
7 online extensively. You can obtain firearms through non-FFLs  
8 online.

9 He went to gun shows regularly. That shows that he  
10 knows how to obtain firearms knew non-FFLs. His father, when  
11 he was being interviewed by the Texas Rangers on the day of  
12 the shooting, said his son could access his firearms.

13 There was the access. There was determination.  
14 There was the means. And there was Kelley's depravity, which  
15 shows that the background check system would not have  
16 prevented him from committing this act.

17 And even if the Air Force failed to submit his  
18 information to NICS, it was not a substantial factor, because  
19 we all know Devin Kelley would have committed this heinous act  
20 regardless of whether his information was in NICS.

21 THE COURT: Finished?

22 MR. STERN: I am, Your Honor.

23 THE COURT: Your response.

24 MR. ALSAFFAR: Do I need to respond, Your Honor?

25 THE COURT: No. But feel free if you want.



1 MR. ALSAFFAR: I think I'm good.

2 THE COURT: So with regard to misrepresentations,  
3 there was no misrepresentation. There was a complete failure  
4 by the United States Air Force to transmit the necessary  
5 information to NICS.

6 With regard to *Johnson v. Sawyer*, I've already ruled  
7 on that. And so this is basically a motion for  
8 reconsideration, which I deny.

9 With regard to the negligent undertaking to all  
10 should be a duty to no one, that's an interesting theory from  
11 the government.

12 You know, the Air Force foresaw that he was a danger.  
13 The tech sergeant -- I think that was her rank -- was saying  
14 that he was a danger to -- "he's going to shoot us all" I  
15 believe was her statement. You know, so the Air Force  
16 obviously knew that he could potentially be a mass shooter,  
17 and so they foresaw this or could have foreseen this. I'm not  
18 making any final rulings.

19 And so there's fact issues still remaining that cause  
20 this motion to be denied on the foreseeability issue.

21 The Air Force was concerned enough to get a  
22 restraining order placed against him that would bar him from  
23 reentering the facility. So, apparently, the Air Force was  
24 protecting themselves. It's disappointing from the government  
25 that the argument is they had no duty to protect the rest of

1 us.

2 Anything else we need to take up today?

3 MR. ALSAFFAR: Not from plaintiffs, Your Honor.

4 THE COURT: We'll resume at 9:00.

5 (Proceedings continued in progress.)

6 -o0o-

7 I certify that the foregoing is a correct transcript from  
8 the record of proceedings in the above-entitled matter. I  
9 further certify that the transcript fees and format comply  
10 with those prescribed by the Court and the Judicial Conference  
11 of the United States.

12  
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